

10-24-2012

State v. Juarez Clerk's Record Dckt. 40135

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LAW CLERK

Vol. 1 of 2

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff/Respondent,

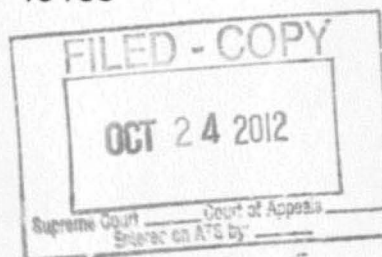
vs.

JUAN L. JUAREZ,

Defendant/Appellant.

Supreme Court No.

40135



RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE ROBERT J. ELGEE, DISTRICT JUDGE

IDAHO STATE APPELLATE
PUBLIC DEFENDERS OFFICE
3647 Lake Harbor Lane
Boise, ID 83703

STATE ATTORNEY GENERAL
CRIMINAL APPEALS
P. O. Box 83720
Boise, ID 83720-0010

Attorney for Defendant/Appellant

Attorney for Plaintiff/Respondent

COPY
40135

VOLUME 1 of 1

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
	)	Supreme Court No.
Plaintiff/Respondent,)	
	)	40135
vs.)	
)	
JUAN L. JUAREZ,)	
)	
Defendant/Appellant.)	

RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE ROBERT J. ELGEE, DISTRICT JUDGE

IDAHO STATE APPELLATE
PUBLIC DEFENDERS OFFICE
3647 Lake Harbor Lane
Boise, ID 83703

STATE ATTORNEY GENERAL
CRIMINAL APPEALS
P. O. Box 83720
Boise, ID 83720-0010

Attorney for Defendant/Appellant

Attorney for Plaintiff/Respondent

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State of Idaho vs. Juan Leon Juarez

Felony

Date		Judge
6/20/2011	New Case Filed - Felony	R. Ted Israel
	Prosecutor assigned Jim Thomas	R. Ted Israel
	Affidavit Of Probable Cause	R. Ted Israel
	Notice of suspension/fail evidentiary test	R. Ted Israel
	Hearing Scheduled (Arraignment 06/20/2011 01:30 PM)	R. Ted Israel
	Amended Criminal Complaint	R. Ted Israel
	Hearing result for Arraignment held on 06/20/2011 01:30 PM: Arraignment / First Appearance	R. Ted Israel
	Application For Appointment Of Attorney - GRANTED	R. Ted Israel
	Document sealed	
	Court Minutes	R. Ted Israel
	Order Setting Preliminary Hearing and Bond	R. Ted Israel
	Hearing Scheduled (Preliminary 07/05/2011 10:00 AM)	Jason Walker
	Defendant: Juarez, Juan L Order Appointing Public Defender Public defender Daniel M. Dolan	R. Ted Israel
	Conditions of Release	R. Ted Israel
6/22/2011	Order Appointing Public Defender	R. Ted Israel
6/28/2011	Notice Of Appearance	R. Ted Israel
	Defendants Request For Discovery	R. Ted Israel
	Notice Of Appearance plea of not guilty jury request	R. Ted Israel
6/30/2011	States Response To Request For Discovery	R. Ted Israel
	State's Request For Discovery/demand For Alibi	R. Ted Israel
7/1/2011	Waiver Of Time for Preliminary Hearing	R. Ted Israel
	Stipulation for continuance of preliminary hearing	R. Ted Israel
	Stipulated bail reduction	R. Ted Israel
7/5/2011	Bond Posted - Surety (Amount 2500.00)	R. Ted Israel
	Hearing result for Preliminary scheduled on 07/05/2011 10:00 AM: Continued	Jason Walker
	Order continuing preliminary hearing	R. Ted Israel
7/6/2011	Hearing Scheduled (Preliminary 08/10/2011 09:00 AM)	R. Ted Israel
8/9/2011	State's First Supplemental Response To Discovery	R. Ted Israel
8/10/2011	Continued (Preliminary 09/14/2011 09:00 AM)	R. Ted Israel
	Notice Of Hearing	R. Ted Israel
9/12/2011	Motion to Revoke Bond	R. Ted Israel
	Order to Revoke bond	R. Ted Israel
	Warrant Issued - Bench Bond amount: .00 Violation of Conditions of Release Defendant: Juarez, Juan L	R. Ted Israel
	STATUS CHANGED: Inactive	R. Ted Israel

State of Idaho vs. Juan Leon Juarez

Felony

Date		Judge
9/14/2011	<p>Court Minutes Hearing type: Preliminary Hearing date: 9/14/2011 Time: 9:15 am Courtroom: Magistrate Courtroom-judicial Bldg Court reporter: Minutes Clerk: KATE Tape Number: MC Defense Attorney: Daniel Dolan Prosecutor: Matthew Fredback</p> <p>Warrant Quashed Violation of Conditions of Release Defendant: Juarez, Juan L</p> <p>STATUS CHANGED: Pending</p> <p>Warrant Recall Notice Sent</p> <p>Order Binding Over</p> <p>Hearing result for Preliminary scheduled on 09/14/2011 09:00 AM: Bound Over (after Prelim)</p>	<p>R. Ted Israel</p> <p>R. Ted Israel</p> <p>R. Ted Israel</p> <p>R. Ted Israel</p>
9/20/2011	<p>Information</p> <p>Notice of District Court Arraignment</p>	<p>Robert J. Elgee</p> <p>Robert J. Elgee</p>
9/22/2011	Hearing Scheduled (Arraignment 09/26/2011 10:00 AM)	Robert J. Elgee
9/26/2011	<p>Court Minutes Hearing type: Arraignment Hearing date: 9/26/2011 Time: 10:05 am Courtroom: District Courtroom-judicial Bldg Court reporter: Susan Israel Minutes Clerk: Crystal Rigby Tape Number: DC Defense Attorney: Daniel Dolan Prosecutor: Jim Thomas</p> <p>Hearing result for Arraignment scheduled on 09/26/2011 10:00 AM: District Court Hearing Held Court Reporter: Susan Israel Estimated Number of Transcript Pages for this hearing: less 100</p> <p>A Plea is entered for charge: - NG (I18-8004 {F} Driving Under the Influence-(Two or More Offenses))</p> <p>A Plea is entered for charge: - NG (I18-8001(3) {M} Driving Without Privileges)</p> <p>District Court Arraignment</p>	<p>Robert J. Elgee</p> <p>Robert J. Elgee</p> <p>Robert J. Elgee</p> <p>Robert J. Elgee</p>
9/28/2011	<p>Hearing Scheduled (Pretrial Conference 12/19/2011 09:00 AM)</p> <p>Hearing Scheduled (Jury Trial 01/10/2012 09:00 AM) 3 day</p> <p>Notice of Trial Setting, Pretrial Conference and Order Governing Further Proceedings</p> <p>Amended Information</p>	<p>Robert J. Elgee</p> <p>Robert J. Elgee</p> <p>Robert J. Elgee</p> <p>Robert J. Elgee</p>

State of Idaho vs. Juan Leon Juarez

Felony

Date		Judge
12/19/2011	<p>Court Minutes</p> <p>Hearing type: Pretrial Conference</p> <p>Hearing date: 12/19/2011</p> <p>Time: 8:59 am</p> <p>Courtroom: District Courtroom-judicial Bldg</p> <p>Court reporter: Susan Israel</p> <p>Minutes Clerk: Crystal Rigby</p> <p>Tape Number: DC</p> <p>Defense Attorney: Daniel Dolan</p> <p>Prosecutor: Jim Thomas</p> <p>Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Terri Smith Receipt number: 0009181 Dated: 12/19/2011 Amount: \$6.00 (Cash)</p> <p>Hearing result for Pretrial Conference scheduled on 12/19/2011 09:00 AM: District Court Hearing Held</p> <p>Court Reporter: Susan Israel</p> <p>Estimated Number of Transcript Pages for this hearing: less 100</p>	Robert J. Elgee
12/20/2011	Continued (Court Trial 01/10/2012 01:30 PM) 3 day	Robert J. Elgee
12/29/2011	States motion in limine	Robert J. Elgee
1/10/2012	<p>Court Minutes</p> <p>Hearing type: Court Trial</p> <p>Hearing date: 1/10/2012</p> <p>Time: 1:28 pm</p> <p>Courtroom: District Courtroom-judicial Bldg</p> <p>Court reporter: Susan Israel</p> <p>Minutes Clerk: Crystal Rigby</p> <p>Tape Number: MC</p> <p>Defense Attorney: Daniel Dolan</p> <p>Prosecutor: Jim Thomas</p> <p>Hearing result for Court Trial/ Motion in Limine scheduled on 01/10/2012 01:30 PM: District Court Hearing Held</p> <p>Court Reporter: Susan Israel</p> <p>Estimated Number of Transcript Pages for this hearing: 3 day less 100</p>	Robert J. Elgee
1/12/2012	Hearing Scheduled (Court Trial 03/09/2012 09:00 AM) 1/2 day	Robert J. Elgee
	Notice Of Hearing	Robert J. Elgee
1/17/2012	State's Second Supplemental Response To Discovery	Robert J. Elgee
	State's Motion to Dismiss Count Two	Robert J. Elgee
1/19/2012	Order Granting Motion to Dismiss Count Two	Robert J. Elgee
	Dismissed by Motion of the Prosecutor with hearing (I18-8001(3) {M} Driving Without Privileges)	Robert J. Elgee
1/30/2012	Defendants Memorandum	Robert J. Elgee
2/13/2012	States Memorandum in support of motion in limine	Robert J. Elgee

Date: 9/6/2012

Fifth Judicial District Court - Blaine County

User: ANDREA

Time: 02:37 PM

ROA Report

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Case: CR-2011-0002386 Current Judge: Robert J. Elgee

Defendant: Juarez, Juan Leon

State of Idaho vs. Juan Leon Juarez

Felony

Date		Judge
3/9/2012	Court Minutes Hearing type: Court Trial Hearing date: 3/9/2012 Time: 8:58 am Courtroom: District Courtroom-judicial Bldg Court reporter: Susan Israel Minutes Clerk: Crystal Rigby Tape Number: DC Defense Attorney: Daniel Dolan Prosecutor: Jim Thomas Found Guilty After Court Trial	Robert J. Elgee
	Hearing result for Court Trial scheduled on 03/09/2012 09:00 AM: District Court Hearing Held Court Reporter: Susan Israel Estimated Number of Transcript Pages for this hearing: 1/2 day more than 100	Robert J. Elgee
	Hearing result for Court Trial scheduled on 03/09/2012 09:00 AM: Court Trial Started 1/2 day	Robert J. Elgee
	Hearing Scheduled (Sentencing 05/21/2012 10:30 AM)	Robert J. Elgee
	Notice Of Hearing	Robert J. Elgee
	Order for Presentence Investigation Report and Substance Abuse Assessment	Robert J. Elgee
	A Plea is entered for charge: - GT (I18-8004 {F} Driving Under the Influence-(Two or More Offenses))	Robert J. Elgee
3/12/2012	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: terry smith Receipt number: 0002085 Dated: 3/12/2012 Amount: \$7.00 (Cash)	Robert J. Elgee
5/21/2012	Court Minutes Hearing type: Sentencing Hearing date: 5/21/2012 Time: 10:54 am Courtroom: District Courtroom-judicial Bldg Court reporter: Susan Israel Minutes Clerk: ANDREA Tape Number: DC Defense Attorney: Daniel Dolan Prosecutor: Matthew Fredback Hearing result for Sentencing scheduled on 05/21/2012 10:30 AM: District Court Hearing Held Court Reporter: Susan Israel Estimated Number of Transcript Pages for this hearing: less 100 pages Hearing result for Sentencing scheduled on 05/21/2012 10:30 AM: Sentencing	Robert J. Elgee
	Sentenced To Incarceration (I18-8004 {F} Driving Under the Influence-(Two or More Offenses)) Confinement terms: Jail: 60 days. Credited time: 14 days. Penitentiary determinate: 3 years. Penitentiary indeterminate: 2 years.	Robert J. Elgee
	Court Accepts Guilty Plea (I18-8004 {F} Driving Under the Influence-(Two or More Offenses))	Robert J. Elgee

Felony

Date		Judge
5/21/2012	Probation Ordered (I18-8004 {F} Driving Under the Influence-(Two or More Offenses)) Probation term: 3 years. (Supervised)	Robert J. Elgee
5/22/2012	Judgment Of Conviction Upon a Plea of Guilty to One Felony County, Suspending Sentence & Order Of Supervised Probation	Robert J. Elgee
	Order on Restitution	Robert J. Elgee
	Surety Bond Exonerated (Amount 2,500.00)	Robert J. Elgee
5/30/2012	State's Motion to Dismiss Count Three	Robert J. Elgee
	Order Granting Motion to Dismiss count Three	Robert J. Elgee
	Addendum to Probation Condition Re: Ignition Interlock Device	Robert J. Elgee
	Dismissed by Motion of the Prosecutor with hearing (I23-505 Alcoholic Beverage-Unlawful Transport or Open Container Violation)	Robert J. Elgee
7/2/2012	Notice Of Appeal	Robert J. Elgee
	Appealed To The Supreme Court	Robert J. Elgee
	STATUS CHANGED: Inactive	Robert J. Elgee
	Ex Parte Motion to : Appoint counsel on appeal; waive fees and costs of appeal; prepare the transcript and clerk's record at public expense	Robert J. Elgee
	Motion to proceed in forma pauperis & supporting affidavit	Robert J. Elgee
7/10/2012	Order: appointing attorney; waiving all fees; for preparation of transcript and clerk's record at public expense	Robert J. Elgee
7/26/2012	Petition to Revoke Probation	Robert J. Elgee
7/27/2012	Warrant Issued - Bench Bond amount: 5000.00 Probation Violation Defendant: Juarez, Juan L	Robert J. Elgee
7/31/2012	Warrant Returned Probation Violation Defendant: Juarez, Juan L	Robert J. Elgee
	STATUS CHANGED: Pending	Robert J. Elgee
	Bond Posted - Surety (Amount 5000.00)	Robert J. Elgee
	Hearing Scheduled (Arraignment 08/20/2012 09:00 AM)	Robert J. Elgee
	Amended Petition to Revoke Probation	Robert J. Elgee
	Warrant Issued - Bench Bond amount: 100000.00 Probation Violation Defendant: Juarez, Juan L	Robert J. Elgee
	STATUS CHANGED: Inactive	Robert J. Elgee
8/3/2012	Hearing Scheduled (Arraignment 08/03/2012 01:30 PM) on PV	Robert J. Elgee
	STATUS CHANGED: Reopened	Robert J. Elgee
	Court Minutes	Robert J. Elgee
	Hearing type: Arraignment on PV	
	Hearing date: 8/3/2012	
	Time: 1:47 pm	
	Minutes Clerk: Heidi Schiers	
	Tape Number: MAG	
	Defense Attorney: Daniel Dolan	
	Prosecutor: Tim Graves	
	Warrant Returned Probation Violation Defendant: Juarez, Juan Leon	Robert J. Elgee
	Hearing result for Arraignment on PV scheduled on 08/03/2012 01:30 PM: Hearing Held	Robert J. Elgee

Date: 9/6/2012

Fifth Judicial District Court - Blaine County

User: ANDREA

Time: 02:37 PM

ROA Report

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Case: CR-2011-0002386 Current Judge: Robert J. Elgee

Defendant: Juarez, Juan Leon

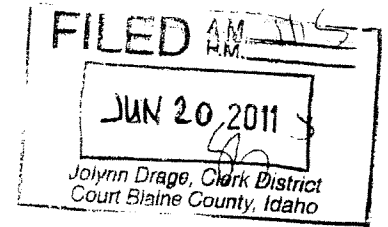
State of Idaho vs. Juan Leon Juarez

Felony

Date		Judge
8/3/2012	Hearing result for Arraignment on PV scheduled on 08/03/2012 01:30 PM: Continued	Robert J. Elgee
	Hearing Scheduled (Admit/Deny Hearing 08/06/2012 11:00 AM)	Robert J. Elgee
8/6/2012	Court Minutes Hearing type: Admit/Deny Hearing Hearing date: 8/6/2012 Time: 4:02 pm Courtroom: Magistrate Courtroom-judicial Bldg Court reporter: Susan Israel Minutes Clerk: SUES Tape Number: DC Defense Attorney: Daniel Dolan Prosecutor: Jim Thomas	Robert J. Elgee
	Hearing result for Arraignment scheduled on 08/20/2012 09:00 AM: Hearing Vacated	Robert J. Elgee
	Hearing result for Admit/Deny Hearing scheduled on 08/06/2012 11:00 AM: District Court Hearing Held Court Reporter: Susan Israel	Robert J. Elgee
	Estimated Number of Transcript Pages for this hearing: less 100 A Plea is entered for charge: - NG (I20-222 Probation Violation)	Robert J. Elgee
	Hearing Scheduled (Evidentiary 08/20/2012 03:30 PM)	Robert J. Elgee
	Notice Of Hearing	Robert J. Elgee
8/7/2012	Order reducing bond	Robert J. Elgee
	Letter from Bondsman stateting bond is still in effect.	Robert J. Elgee
	Notice Of Appearance	Robert J. Elgee
	Defendants Request For Discovery	Robert J. Elgee
8/8/2012	State's Request For Discovery/demand For Alibi	Robert J. Elgee
	States Response To Request For Discovery	Robert J. Elgee
	State's Motion to Continue	Robert J. Elgee
8/13/2012	Continued (Evidentiary 10/01/2012 09:00 AM)	Robert J. Elgee
	Notice Of Hearing	Robert J. Elgee
	Order Granting Continuance	Robert J. Elgee
	Amended Notice Of Hearing	Robert J. Elgee
8/21/2012	State's Third Supplemental Response To Discovery	Robert J. Elgee

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11- 2384

CRIMINAL COMPLAINT

COMES NOW, Matthew Fredback, Deputy Prosecuting Attorney, who hereby submits the following criminal complaint based upon the sworn affidavit of Joshua Pritchard, a duly appointed peace officer, and charges the defendant with the following criminal offense:

COUNT ONE

Part One

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive or was in actual physical control of a motor vehicle upon a highway, street or bridge, or upon public or private property open to the public, to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, while under the

influence of alcohol, drugs or other intoxicating substances to a degree which impaired her ability to operate a motor vehicle and/or was driving with an alcohol concentration of .08 or more as determined by analysis of blood, urine or breath, in violation of Idaho Code §§ 18-8004(1)(a), DRIVING UNDER THE INFLUENCE.

COUNT ONE

Part Two

That the Defendant, JUAN L. JUAREZ, did unlawfully commit those acts set forth in Count One, Part One, of this Complaint at a time when the Defendant had pled guilty to or was found guilty of, within the previous ten (10) years, at least two violations of a substantially conforming foreign criminal violation, to-wit:

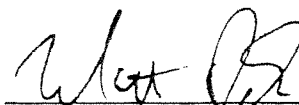
1. That the Defendant, JUAN L. JUAREZ, on or about the 11th of July, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, in violation of Nevada Revised Statutes § 484C, a MISDEMEANOR, in the State of Nevada;

2. That the Defendant, JUAN L. JUAREZ, on or about the 17th of September, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, a MISDEMEANOR, in violation of California Vehicle Code § 23152, in the State of California;

in violation of Idaho Code §§ 18-8004, 18-8005(6), 18-8005(10), DRIVING UNDER THE INFLUENCE (THIRD OFFENSE WITHIN TEN (10) YEARS), a FELONY.

All of which is contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Idaho.

Wherefore, Plaintiff State of Idaho prays that the defendant be brought before the Court and dealt with according to law.



Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

Subscribed and sworn to before me this 20 day of June, 2011.

A handwritten signature in cursive script, appearing to read "Neo Noel", written above a horizontal line.

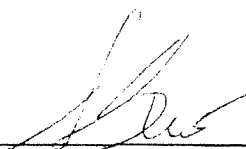
Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of June, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting
Attorney's Office
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333

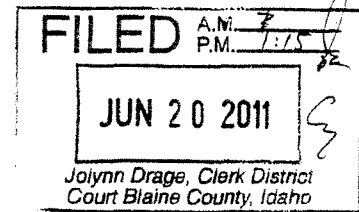
☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Deputy Clerk

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11- 2386

AMENDED CRIMINAL COMPLAINT

COMES NOW, Matthew Fredback, Deputy Prosecuting Attorney, who hereby submits the following criminal complaint based upon the sworn affidavit of Joshua Pritchard, a duly appointed peace officer, and charges the defendant with the following criminal offense:

COUNT ONE

Part One

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive or was in actual physical control of a motor vehicle upon a highway, street or bridge, or upon public or private property open to the public, to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, while under the

influence of alcohol, drugs or other intoxicating substances to a degree which impaired his ability to operate a motor vehicle and/or was driving with an alcohol concentration of .08 or more as determined by analysis of blood, urine or breath, in violation of Idaho Code §§ 18-8004(1)(a), DRIVING UNDER THE INFLUENCE.

COUNT ONE

Part Two

That the Defendant, JUAN L. JUAREZ, did unlawfully commit those acts set forth in Count One, Part One, of this Complaint at a time when the Defendant had pled guilty to or was found guilty of, within the previous ten (10) years, at least two violations of a substantially conforming foreign criminal violation, to-wit:

1. That the Defendant, JUAN L. JUAREZ, on or about the 11th of July, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, in violation of Nevada Revised Statutes § 484C, a MISDEMEANOR, in the State of Nevada;

2. That the Defendant, JUAN L. JUAREZ, on or about the 17th of September, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, a MISDEMEANOR, in violation of California Vehicle Code § 23152, in the State of California;

in violation of Idaho Code §§ 18-8004, 18-8005(6), 18-8005(10), DRIVING UNDER THE INFLUENCE (THIRD OFFENSE WITHIN TEN (10) YEARS), a FELONY.

COUNT TWO

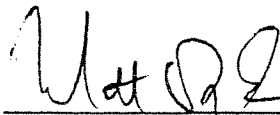
That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive and/or was in actual physical control of a motor vehicle; to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, knowing his driver's license was suspended in Idaho, in violation of Idaho Code § 18-8001, DRIVING WITHOUT PRIVILEGES, a MISDEMEANOR.

COUNT THREE

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did willfully and unlawfully possess an open container of alcohol in a motor vehicle located on or at or near milepost 104 on State Highway 75 in Blaine County Idaho, in violation of Idaho Code § 23-505(2), POSSESSION OF AN OPEN CONTAINER OF ALCOHOL IN A MOTOR VEHICLE, a MISDEMEANOR.


All of which is contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Idaho.

Wherefore, Plaintiff State of Idaho prays that the defendant be brought before the Court and dealt with according to law.



Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

Subscribed and sworn to before me this 20 day of June, 2011.



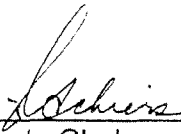
Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting
Attorney's Office
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Deputy Clerk

ORIGINAL

Department Report # BCSO1106-0032

IN THE DISTRICT COURT OF THE 5TH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE.

THE STATE OF IDAHO,

Plaintiff,

V.

Juan L. Juarez

Defendant,

DOB: [REDACTED]

SSN: [REDACTED]

DL# [REDACTED]

State: CA

State of Idaho,

County of Blaine

COURT CASE NUMBER

PROBABLE CAUSE AFFIDAVIT, IN SUPPORT
OF ARREST AND/OR REFUSAL TO TAKE TEST

JUN 20 2011

Jolynn Drage, Clerk District
Court Blaine County, Idaho

SS

PC Found
n72
6/20/11
A7

10:55
a.m.

I, Joshua Pritchard, the undersigned, being first duly sworn on oath, deposes and says that:

- I am a peace officer employed by The Blaine County Sheriff's Office
- The defendant was arrested on 6/18/2011 at 10:11 ☐ AM ☒ PM for the crime of driving while under the influence of alcohol, drugs or any other intoxicating substance pursuant to section 18-8004 Idaho Code.
Second or more DUI offense in the last five years? ☐ YES ☒ NO ☒ FELONY ☐ MISDEMEANOR
- Location of Occurrence: Highway 75, Milepost 104, Blaine County, Idaho.
- Identified the defendant as: Juan L Juarez By: (Check Box)
☐ Military ID ☐ State ID Card ☒ Drivers License ☐ Credit Cards
☐ Paperwork found ☐ Verbal ID by defendant
☐ Witness: identified defendant.
☒ Other: International Drivers License
- Actual physical control established by: ☒ Observation by affiant ☐ Observation by Officer
☐ Admission of Defendant to , ☐ Statement of Witness:
☐ Other
- I believe that there is probable cause to believe that the defendant committed such crime because of the following facts:

PROBABLE CAUSE FOR STOP AND ARREST:

On June 18, 2011 at approximately 20:00 hours while on patrol on State Highway 75 near milepost 103 I observed is a 2000 Chevrolet Blazer bearing Idaho license plate E103010 traveling northbound. I observed the vehicle cross the center line once and the fog line three times in approximately a 60 second period. I activated my over head emergency lights and initiated a traffic stop on the vehicle at State Highway 75 and milepost 10 for failure to maintain lane pursuant to Idaho Code 49-637.

I approached the vehicle and spoke with the driver who was identified by his international driver's license as Juan L. Juarez (DOB [REDACTED]). When speaking with Juarez I could smell the strong odor of an alcoholic beverage coming from his breath. Juarez's eyes also appeared to be bloodshot and glassy. I asked Juarez how much he had to drink tonight. Juarez stated "oh...I am kind of drunk." I again asked Juarez how much he had to drink. Juarez stated "quite a few." I then asked Juarez what he had been drinking and he stated "Budweiser." I asked Juarez where he had been drinking at. He stated in Shoshone.

I checked Juarez's driver status through dispatch and found he was revoked out of Nevada and suspended or revoked out of California. I returned to Juarez's vehicle and asked him to step out and come to the rear of his vehicle for me. Juarez stepped out of his car and stumbled almost falling over backwards on two occasions. I advised Juarez I was going to administer him the three standardized field sobriety test to determine if he was ok to be operating a motor vehicle. Juarez then stated "I am drunk dude." I asked Juarez if he could take one step forward toward me. Juarez stated "I can't." I asked Juarez if he was going to do the tests. Juarez stated "no." I again asked Juarez if he was going to perform the tests for me. Juarez stated "no." I instructed Juarez to turn around and place his hands behind his back because he was being placed under arrest for DUI. Juarez was placed in handcuffs, searched and placed in my patrol vehicle.

I transported Juarez to St Luke's Hospital where I read the ALS form to him. After reading the ALS form an employee from St Luke's entered the room and drew two vials of blood from Juarez using the Idaho State Blood Kit that I provided. After completion of the blood draw Juarez was placed back in my patrol vehicle and transported to the Blaine County Jail.

Once at the Jail I checked Juarez's criminal history and found a DUI conviction out of the state of Nevada on 7-11-2007. I also found a DUI conviction out of the state of California on 9-17-2007.

D.U.I Notes

Odor of alcoholic beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Admitted drinking alcohol beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Slurred speech	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Impaired memory	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Glassy/bloodshot eyes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Other

Sobriety Tests – Meets Decision Points?

Gaze Nystagmus	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Walk & Turn	<input type="checkbox"/> Yes	<input type="checkbox"/> No
One Leg Stand	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Crash Involved	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Injury	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Drugs Suspected ☐ Yes ☒ No Drug Recognition Evaluation Performed ☐ Yes ☒ No
Reason Drugs are Suspected

Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code.

☒ Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Section 18-8003 & 18-8004(4), Idaho Code and the standards and methods adopted by the Department of Law Enforcement.

BAC: by: ☐ Breath Instrument Type: ☐ Intoxilyzer 5000 ☐ Alco Sensor Serial #
☒ Blood AND/OR ☐ Urine Test Results Pending? ☒ Yes ☐ No (Attached)
Name of person administering breath test: Date Certification Expires:

☐ Defendant refused the test as follows:

By my signature and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and attached reports and documents that may be included herein is true and correct to the best of my information and belief.

Signed: _____

(affiant)

Subscribed and sworn to before me on _____

(Date)

PERSON AUTHORIZED TO ADMINISTER
OATHS.

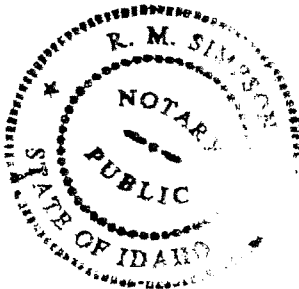
Title: _____

(or)

NOTARY PUBLIC FOR IDAHO

Residing at: _____

My Commission expires: _____



5th JUDICIAL DISTRICT, STATE OF IDAHO, COUNTY OF BLAINE
FELONY ARRAIGNMENT MINUTE ENTRY

STATE v. Juan L Juarez

Case No. : CR-2011-0002386

D.L.#: [REDACTED]

DOB: [REDACTED]

Date: 6/20/2011

Address: [REDACTED] Hailey, ID 83333

Judge: R. Ted Israel

CD No. MAG Counter: + 35 / 1:38:55 Interpreter: Maria Djaaran

Prosecutor: Matt Fredback ✓

Clerk: Heidi

DEFENDANT having been charged with the following:

COUNT 1: Driving Under the Influence-(Two or More Offenses)

- max 10 yrs state pen; \$5000 fine; min 30 days jail; 5 yrs. DL susp.

AMENDED:

② * DWP {M} * - *6 mo. jail + \$1000 fine, 6 mo DL susp.* ③ Open Containers - *6 mo jail; \$1000 fine*
Defendant: (✓) Appeared () Failed to Appear *min. 2 days jail* () Bench Warrant Issued & Bond Forfeiture Ordered

() Advised of all rights and penalties per ICR 5, including right to remain silent, that statements may be used against him/her, right to bail, right to counsel, appointment of Public Defender as provided by law, Preliminary Hearing. (✓) viewed slideshow

() Represented by Counsel (present) _____

(✓) Advised of Charges () Waived Counsel (✓) Requested PD () Private Attorney

() Waived Reading Complaint (✓) Complaint Read by Court () Requested Continuance

(✓) Bond \$ 7,500.⁰⁰ () Remanded to Custody of Sheriff *interpreter*

() Ordered Released

() Own Recognizance

() To Pre-Trial Services

() Other _____

Public Defender appointed: _____

Dan Dolan

Preliminary Hearing set: _____

July 5, 2011 @ 10:00 am

1:48 Court questions Δ re. work/finances. Δ *spends* ~~makes~~ \$790/month on food & rent.

Δ is not currently working, last worked April 3 for Sun Valley. He is living w/ girlfriend; she is paying the bills. He has lived here approx more than 6 months.

* No immigration hold. ✓

Court enters not guilty pleas to misdemeanors. Δ *is* required to appear.

Mr. Fredback states position on bond. Δ has 2 prior DUI's, no other criminal history.

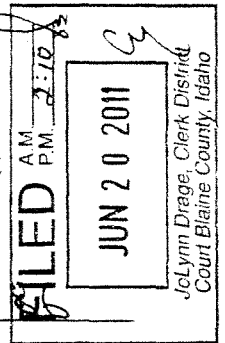
Δ has no particular contacts w/ community or employment. He's been here only a short time.

State requests \$7500 bond & conditions of release.

1:53 Δ questions how long he will be in jail.

Court sets conditions of release.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE
MAGISTRATE DIVISION



STATE OF IDAHO,
Plaintiff,

vs.

JOAN L. JUANES
Defendant.

CASE NO. CR- 2011 - 2386

CONDITIONS OF RELEASE

Defendant having appeared before the Court and the Court having:

- ☒ set Bail in the amount of \$ 7500.00.
☐ released the Defendant on his/her own recognizance.
AND
☒ determined that conditions of release are necessary.

IT IS HEREBY ORDERED that:

[x] The Defendant shall **appear** at all further proceedings in this matter.

[x] The Defendant shall at all times **keep the Clerk of the Court advised of his/her current mailing address**. It is the Defendant's responsibility to obtain and correctly respond to any notice or other document mailed to his/her last known address.

[x] If represented by counsel, the Defendant shall **maintain contact with the attorney** as the attorney requires.

[x] The Defendant shall **not be cited, arrested, charged or convicted of any offense** that shall constitute a misdemeanor or felony under the laws of the State of Idaho or any other municipal, state or federal jurisdiction.

☒ The Defendant shall **not consume or possess any alcohol or controlled substances** without a prescription issued by a physician. The Defendant shall **submit to evidentiary testing at his own expense** for alcohol or controlled substances when requested by a police officer, probation officer, counselor or the Court. Said testing shall be provided and/or monitored by the Blaine County Misdemeanor Probation Office or any agency contacted by the Blaine County Misdemeanor Probation office to supervise such testing. The Defendant shall comply with all requirements of the Probation Office. Said testing shall occur:

☒ Randomly.

☐ Daily. (The probation department may require more than one test per day.)

☐ Other: _____

☒ The Defendant shall not enter any establishment where alcohol is sold by the drink to be consumed on the premises.

☒ The Defendant shall not be in actual physical control of a motor vehicle ~~after consuming alcohol or controlled substances not prescribed by a physician~~

☐ The Defendant shall not leave: ☐ the State of Idaho ☐ Blaine County ☐ Other: _____ without the prior written permission of the Court.

☐ This restriction shall be monitored by electronic or global positioning tracking. The Defendant shall pay the cost of any monitoring. The Defendant is hereby notified that violation of this condition of release constitutes the criminal offense of escape.

☐ Monitoring shall be provided by: _____

☐ The Defendant shall abide by all provisions of any existing no contact order.

☒ Upon the posting of bail or release as outlined above, the Defendant shall immediately report to the Blaine County Misdemeanor Probation Department.

☐ Other provisions: _____

DATED 20 June 2011

Richard D. Hall
Judge

FAILURE TO ABIDE BY THE CONDITIONS OF THIS RELEASE MAY RESULT IN FORFEITURE OF BOND, IF ANY, AND A WARRANT FOR THE DEFENDANT'S ARREST.

I acknowledge that I have read and received a copy of this Order.

DATED 6-20-11
Juan Leon

Juan Leon
Defendant

cc: ☒ Prosecutor ☒ Defendant
☒ Defense Attorney ☒ Blaine County Sheriff
☒ Blaine County Misdemeanor Probation Department
☐ Other: _____

☒ The Defendant shall **not enter any establishment where alcohol is sold by the drink to be consumed on the premises.**

☒ The Defendant shall **not be in actual physical control of a motor vehicle ~~after consuming alcohol or controlled substances not prescribed by a physician~~**

☐ The Defendant shall **not leave:** ☐ the State of Idaho ☐ Blaine County ☐ Other: _____ without the prior written permission of the Court.

☐ This restriction shall be monitored by electronic or global positioning tracking. The Defendant shall pay the cost of any monitoring. **The Defendant is hereby notified that violation of this condition of release constitutes the criminal offense of escape.**

☐ Monitoring shall be provided by: _____

☐ The Defendant shall **abide by all provisions of any existing no contact order.**

☒ Upon the posting of bail or release as outlined above, the Defendant **shall immediately report to the Blaine County Misdemeanor Probation Department.**

☐ Other provisions: _____

DATED 20 June 2011

N. Reed Daniel
Judge

FAILURE TO ABIDE BY THE CONDITIONS OF THIS RELEASE MAY RESULT IN FORFEITURE OF BOND, IF ANY, AND A WARRANT FOR THE DEFENDANT'S ARREST.

I acknowledge that I have read and received a copy of this Order.

DATED _____

Defendant

cc: ☒ Prosecutor

☒ Defendant

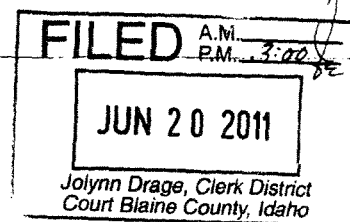
☒ Defense Attorney

☒ Blaine County Sheriff

☒ Blaine County Misdemeanor Probation Department

☐ Other: _____

CONFIDENTIAL



EN EL TRIBUNAL DE DISTRITO DEL QUINTO DISTRITO JUDICIAL DEL ESTADO DE IDAHO, EN Y PARA EL CONDADO DE BLAINE.

Solicitud de Abogado Defensor Público

Usted debe completar esta solicitud totalmente. Marque todas las casillas que correspondan. Si su respuesta a una pregunta es "ninguno" escriba "ninguno" en el espacio en blanco. Si la pregunta no es aplicable a su situación, escriba "N/A" (no es aplicable) en el espacio en blanco.

Nombre y Apellido: Juan Leon S Fecha de nacimiento: 1-11-86
 Dirección Postal: shenandoah Número de Seguro Social: 610-12-6269
APT 202 Teléfono: (208) 570 388

[] Soltero(a) ☒ Casado(a) [] Divorciado(a) Tengo 0 hijos(as) menores de 18 años.
 Estoy obligado a pagar manutención infantil (pensión de alimentos) en la suma de \$ 0 por mes. Actualmente debo \$ 0 por pagos atrasados.

Nombre de empleador: N/A Trabajo N/A horas por semana.
 Ingreso total mensual: \$ 0 Cantidad que llevo a la casa por mes: \$ 790
 Duración de Empleo: N/A [] En la actualidad no estoy empleado.

Tengo una cuenta [] corriente [] de ahorros u [] otra cuenta en el banco:
 El valor total de todas las cantidades depositadas en ese banco es: \$ 1.50.

Tengo los siguientes ingresos adicionales mensuales: Segundo trabajo: \$ N/A
 Desempleo: \$ N/A Manutención infantil: \$ 0
 Otros ayudas gubernamentales: \$ 0 Trabajo de media jornada: \$ 0
 Ingreso de fondo fiduciario: \$ 0 Dividendos: \$ 0
 Ingreso de esposo(a): \$ 0 Otro: \$ 0

Mi ingreso total el año pasado fue: \$ I am not sure

Soy Dueño de los siguientes bienes inmuebles:

Lugar	Valor	Cantidad Debida
<u>N/A</u>		

Los siguientes bienes personales me pertenecen y su valor es:

Cualquier tipo de vehículo motorizado: \$ <u>0</u>	Armas de Fuego: \$ <u>0</u>
Cualquier remolque o casa móvil o rodante: \$ <u>0</u>	Muebles, enseres domésticos \$ <u>0</u>
Cualquier tipo de herramientas o equipo: \$ <u>0</u>	
Cualquier otro bien personal incluyendo, pero no siendo limitado a, equipos electrónicos, computadoras, equipo deportivo, instrumentos musicales, colecciones de sellos o estampillas, monedas o tarjetas de colección u otros objetos de valor: \$ <u>0</u>	

Tengo interés directo como socio, como parte de una empresa o como beneficiario de un fideicomiso en los siguientes artículos:

Artículo	Valor
<u>N/A</u>	

[] Puedo [] No puedo pedir prestado el dinero para pagar un abogado.

Tengo los siguientes gastos mensuales:

Gasto	Cantidad
Renta de arrendamiento / Pago mensual de la hipoteca de la casa	\$ 600
Comida	\$ 100
Servicios (Agua, Electricidad, Gas, etc)	\$ 90
Deuda de Tarjetas de Crédito	\$ 0
Pago del préstamo del auto	\$ 0
Gastos Médicos	\$ 0
Seguros (casa, auto, arrendatario)	\$ 0
Otros: (sea específico Por Favor)	\$ 0
	\$ 0
	\$ 0
	\$ 0
	\$ 790.

Debo a las siguientes personas o entidades una cantidad en exceso de \$150:

Persona o entidad	Cantidad debida	Razón de la deuda
N-A		

Por la presente autorizo a cualquier persona o entidad a revelar información financiera al Tribunal de Distrito del Quinto Distrito Judicial, Condado de Blaine, Estado de Idaho, siempre que la información esté relacionada con mi situación financiera como ha sido descrita en esta solicitud, todo lo anterior con el propósito de evaluar mi elegibilidad permanente para el nombramiento de un Abogado Defensor Público.

Por la presente, además, declaro y certifico bajo juramento que todas las declaraciones anteriores son ciertas según mi leal saber. Entiendo que si estas declaraciones no son ciertas puedo ser procesado por Perjurio, I.C. § 18-5401, y castigado con una condena de no menos que uno ni más que catorce años en la penitenciaría estatal.

FECHA: 6-20-11 ACUSADO: Juan Leon J.

ORDER

Based on the bove application and good cause appearing therefore;

IT IS HEREBY ORDERED that:

- The application for Public Defender is: [X] GRANTED [] DENIED because:
- The Defendant shall initially reimburse Blaine County in the sum of \$_____ for the services of the Public Defender. Payment arrangements shall be made with the Clerk of the Court. Failure to abide by those arrangements may be grounds for Contempt of Court and an additional jail sentence of up to five days and fine of up to \$5,000.

DATED: 20 June 2011 JUDGE: [Signature]

ORDER SETTING PRELIMINARY HEARING AND BOND

STATE OF IDAHO v. JUAN L. SUAREZ

Case No. CR- 2011 - 2386

IT IS HEREBY ORDERED that the matter is SET FOR PRELIMINARY HEARING at the Blaine County Courthouse, Hailey, Idaho, as follows:

DATE OF PRELIMINARY HEARING: July 5, 2011 AT 10:00 am

ASSIGNED JUDGE: ☐ Israel ☐ Ingram ☒ Other: WALKER

IT IS FURTHER ORDERED that BOND IS SET in the amount of: ☐ O.R. ☒ \$ 7500.00

IT IS FURTHER ORDERED that:

2. ☐ No Contact Order issued.

1. The Defendant MUST APPEAR at the time set.

3. ☒ Conditions of Release required.

A WARRANT MAY BE ISSUED FOR FAILURE TO COMPLY WITH THIS ORDER.

DATED: 20 June 2011

R. Ted Doral

JUDGE

RECEIVED BY:

Juan L. Suarez
DEFENDANT

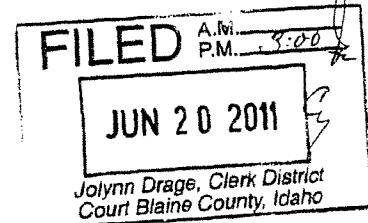
cc: ☒ Prosecuting Attorney

Thomas

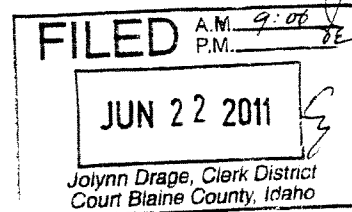
☒ Defense Attorney

Dolan

☐ Blaine County Sheriff



Fifth Judicial District Court, State of Idaho
In and For the County of Blaine
201 2nd Avenue South, Suite 106
Hailey, Idaho 83333



STATE OF IDAHO
Plaintiff,

vs.

Juan L Juarez

Hailey, ID 83333

Defendant.

DOB:

DL or SSN:

CA

Case No: CR-2011-0002386

ORDER APPOINTING PUBLIC DEFENDER

The Court being fully advised as to the application of Juan L Juarez, and it appearing to be a proper case,

NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

Public Defender's Office
Daniel M. Dolan
P.O. Box 757
Ketchum ID 83340

Public Defender for the County of Blaine, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Juan L Juarez, in all proceedings in the above-entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

Date: 6-20-2011

R. Ted Israel
Judge

Copies to:

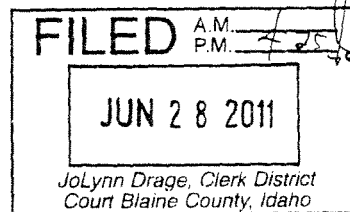
- ☒ Public Defender
- ☒ Prosecutor
- ☒ Defendant - received info at PSF

Lochie
Deputy Clerk

Order Appointing Public Defender

DOC30 10/88

DANIEL M. DOLAN
Attorney At Law
671 First Avenue North
Post Office Box 757
Ketchum, ID 83340
Telephone: 208-726-3005
Facsimile: 208-726-1187
Idaho State Bar Number 4147
Attorney for Defendant



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

STATE OF IDAHO,

Plaintiff,

vs.

Juan L. Juarez,


Defendant.

Case No. CR 2011 2386

NOTICE OF APPEARANCE

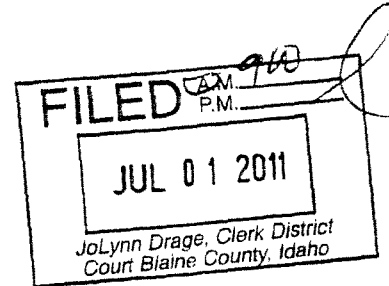
PLEASE TAKE NOTICE that Daniel M. Dolan, Attorney at Law, DOES NOW,
appear as counsel of record for the above named defendant.

DATED: June 28, 2011



Daniel M. Dolan
Attorney for Defendant

DANIEL M. DOLAN
 Attorney At Law
 671 First Avenue North
 Post Office Box 757
 Ketchum, ID 83340
 Telephone: 208-726-3005
 Facsimile: 208-726-1187
 Idaho State Bar Number 4147



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE
 MAGISTRATE DIVISION**

STATE OF IDAHO,)

Plaintiff,)

vs.)

Juan L. Juarrez)

Defendant.)

Case No. CR 2011 002386

STIPULATION
 FOR CONTINUANCE OF
 PRELIMINARY HEARING

COMES NOW the State of Idaho by and through the Blaine County Prosecutor's Office and Daniel M. Dolan, Attorney at Law and counsel of record for the above-named defendant, and hereby stipulate that the preliminary hearing set in the above-entitled action for July 5, 2011 may be continued to August 10, 2011, because the blood test results will take 5 to 6 weeks for the report.

Matthew Fredback
 Prosecuting Attorney

Daniel M Dolan
 Attorney For Defendant

6/30/11
 DATED

6-29-2011
 DATED

STIPULATION

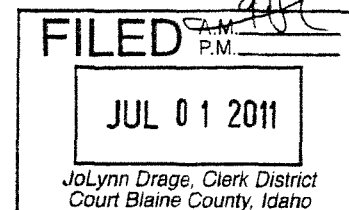
Page 1

06/30/2011 15:48 12887261187

DANIEL DOLAN

PAGE 02/04

DANIEL M. DOLAN
Attorney At Law
671 First Avenue North
Post Office Box 757
Ketchum, ID 83340
Telephone: 208-726-3005
Facsimile: 208-726-1187
Attorney for Defendant
Idaho State Bar # 4147



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE
MAGISTRATE DIVISION

STATE OF IDAHO,
Plaintiff,

vs.

Juan Juarez,
Defendant.


Case No. CR 2011 2386

Waiver of Time
for Preliminary Hearing

The defendant by his signature below acknowledges that he/she has a right to have a preliminary hearing within 14 days if in custody and 21 days if out of custody of the defendant's initial appearance as is provided by Idaho Criminal Rule 5.1

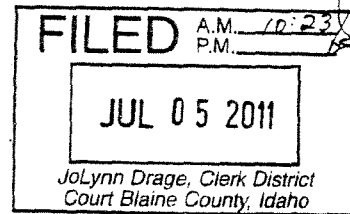
Further, the defendant acknowledges by his/her signature below that he/she waives the right to have the preliminary hearing on the date currently set and said hearing should be continued to a date certain.

Dated this 30 day of June 2011


Juan Juarez
Defendant

Waiver of Time

Page 1



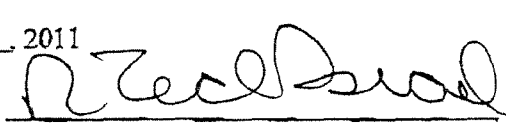
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE
MAGISTRATE DIVISION

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR 2011 2386
vs.)	
	)	Order Continuing
Juan Juarez,	)	Preliminary Hearing
)	
Defendant.)	
)	

This matter having come before the above entitled Court upon the Defendant's motion for a continuance of the preliminary hearing, the State not objecting and good cause appearing the preliminary hearing shall be reset to a date certain.

NOW THEREFORE the preliminary hearing currently schedule herein shall be continued to August 10, 2011 at 9:00a.m. o'clock.

Dated this 1 day of July 2011


R. Ted Israel
Magistrate Judge

Order Continuing Preliminary Hearing

Page 1

CERTIFICATE OF SERVICE

I hereby certify that on this 6 Day of July, 2011, I served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting Attorney
201 2nd Ave South Ste. 100
Hailey, Idaho 83333
208 788-5554

☐ U.S. Mail Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Telecopy

Daniel M. Dolan
P.O. Box 757
Ketchum, Idaho 83340
208 726-1187

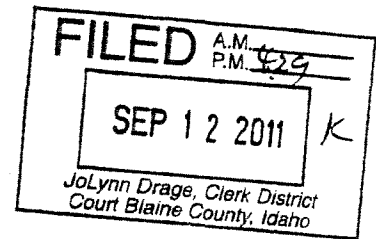
☒ U.S. Mail Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Telecopy

BC jail

Deputy Clerk

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11-2386

MOTION TO REVOKE BOND

Plaintiff State of Idaho moves the Court pursuant to its previous ORDER ON CONDITIONS OF RELEASE for the Defendant, JUAN L. JUAREZ, in the above-captioned case to revoke bond.

The Defendant was arraigned on June 20th, 2011, on the felony charge of DRIVING UNDER THE INFLUENCE (THIRD OFFENSE WITHIN TEN (10) YEARS), I.C. §§ 18-8004, 18-8005(5), with an Order from the Court on Conditions of Release, see State's Exhibit 1.

Plaintiff State of Idaho hereby alleges through the Affidavit Regarding Violation of Conditions of Release of Blaine County Probation Officer Jodi Brown dated September 12th, 2011, see State's Exhibit 2, that the Defendant, JUAN L. JUAREZ, has violated the terms and conditions of his release as follows:

1. The Defendant was arraigned on June 20th, 2011, with an Order from the Court on Conditions of Release, see State's Exhibit 1.

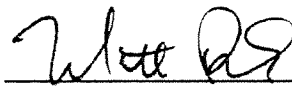
2. On June 20th, 2011, the Defendant was ordered not to consume or possess any alcohol and to submit to random testing as requested by the Blaine County Probation Office, see State's Exhibit 1.

3. On July 1st, 2011, the Defendant posted a bond of two thousand five hundred dollars (\$2,500.00).

4. On September 6th, 2011, the Defendant submitted to a random 80 hour alcohol test (ETG/ETS), which was sent to Redwood Toxicology Lab and returned positive for alcohol consumption, see State's Exhibit 2.

Wherefore, Plaintiff State of Idaho prays that a warrant be issued for the arrest of the Defendant, JUAN L. JUAREZ, and that the Defendant be brought before the Court and dealt with according to law.

SUBSCRIBED AND SWORN TO this 12 day of September, 2011.



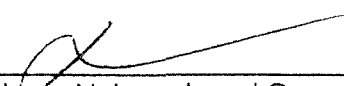
Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Janis Nelson, Legal Secretary

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

MAGISTRATE DIVISION

STATE OF IDAHO,
Plaintiff,

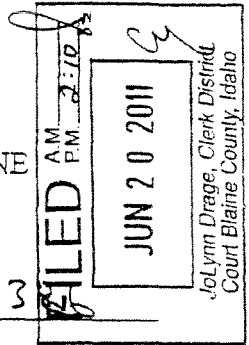
vs.

JUAN L. JUANES
Defendant.

CASE NO. CR- 2011-23

2386

CONDITIONS OF RELEASE



Defendant having appeared before the Court and the Court having:

- ☒ set Bail in the amount of \$ 7500.00.
☐ released the Defendant on his/her own recognizance.
AND
☒ determined that conditions of release are necessary.

IT IS HEREBY ORDERED that:

[x] The Defendant shall **appear** at all further proceedings in this matter.

[x] The Defendant shall at all times **keep the Clerk of the Court advised of his/her current mailing address**. It is the Defendant's responsibility to obtain and correctly respond to any notice or other document mailed to his/her last known address.

[x] If represented by counsel, the Defendant shall **maintain contact with the attorney** as the attorney requires.

[x] The Defendant shall **not be cited, arrested, charged or convicted of any offense** that shall constitute a misdemeanor or felony under the laws of the State of Idaho or any other municipal, state or federal jurisdiction.

☒ The Defendant shall **not consume or possess any alcohol or controlled substances** without a prescription issued by a physician. The Defendant shall **submit to evidentiary testing at his own expense** for alcohol or controlled substances when requested by a police officer, probation officer, counselor or the Court. Said testing shall be provided and/or monitored by the Blaine County Misdemeanor Probation Office or any agency contacted by the Blaine County Misdemeanor Probation office to supervise such testing. The Defendant shall comply with all requirements of the Probation Office. Said testing shall occur:

- ☒ Randomly.
☐ Daily. (The probation department may require more than one test per day.)
☐ Other: _____

STATES
EXHIBIT

☒ The Defendant shall not enter any establishment where alcohol is sold by the drink to be consumed on the premises.

☒ The Defendant shall not be in actual physical control of a motor vehicle ~~after consuming alcohol or controlled substances not prescribed by a physician~~

☐ The Defendant shall not leave: ☐ the State of Idaho ☐ Blaine County ☐ Other: _____ without the prior written permission of the Court.

☐ This restriction shall be monitored by electronic or global positioning tracking. The Defendant shall pay the cost of any monitoring. The Defendant is hereby notified that violation of this condition of release constitutes the criminal offense of escape.

☐ Monitoring shall be provided by: _____

☐ The Defendant shall abide by all provisions of any existing no contact order.

☒ Upon the posting of bail or release as outlined above, the Defendant shall immediately report to the Blaine County Misdemeanor Probation Department.

☐ Other provisions: _____

DATED 20 June 2011

N. Ted Noel
Judge

FAILURE TO ABIDE BY THE CONDITIONS OF THIS RELEASE MAY RESULT IN FORFEITURE OF BOND, IF ANY, AND A WARRANT FOR THE DEFENDANT'S ARREST.

I acknowledge that I have read and received a copy of this Order.

DATED _____

Defendant

cc: ☒ Prosecutor ☒ Defendant
☒ Defense Attorney ☒ Blaine County Sheriff
☒ Blaine County Misdemeanor Probation Department
☐ Other: _____

Teresa Espedal
Blaine County Probation Department
219 1st Avenue South, Ste 108
Hailey, Idaho 83333
Telephone: (208) 788-5528
Fax: (208) 788-5541

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE COUNTY

STATE OF IDAHO

Plaintiff

CASE #CR-2011-2386

vs.

AFFIDAVIT REGARDING VIOLATION
OF CONDITIONS OF RELEASE

Juan L. Juarez
Defendant

STATE OF IDAHO)
) ss.
County of Blaine)

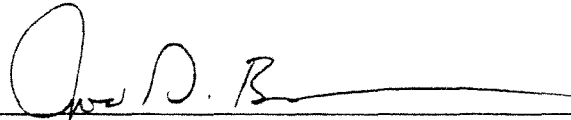
I, Jodi Brown , being first duly sworn upon oath, deposes and states as follows:

I serve as the Blaine County Probation Officer

1. Juan L. Juarez was ordered to comply with **Conditions of Release** in Case #CR-2011-2386 on June 20th, 2011.
2. A term of the defendant's release was that he/she not consume or possess any alcohol. The Defendant shall submit to an evidentiary test at his own expense for alcohol or controlled substances when requested by a police officer, probation officer, counselor or the Court. Said testing shall occur: Randomly,

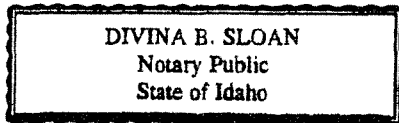
STATES
EXHIBIT
2

3 The defendant has violated the Conditions of Release by: Juan Juarez reported to the Blaine County Probation Office on September 6th, 2011 and submitted to an 80 hour alcohol test (ETG/ETS) .The test was sent to Redwood Toxicology Lab and came back positive for alcohol consumption.



Jodi Brown
Blaine County Probation Officer

SUBSCRIBED AND SWORN to before me this 12th day of September, 2011



Notary Public for Idaho
Residing in: Hailey, Idaho
My Commission Expires June 25, 2016

MY COMMISSION EXPIRES
June 25, 2016
(ONDED) THRU NOTARY PUBLIC UNDERWRITERS

REDWOOD TOXICOLOGY LABORATORY
3650 Westwind Blvd., Santa Rosa, CA 95403 Phone: 707-577-7959 / 800-255-2159 Fax: 707-577-0365
TOXICOLOGY SUMMARY REPORT

Client: 5906 Blaine County Juvenile
Probation
Attn: Bea Sloan

Print Date: 09/09/2011

Date Received: 09/08/2011

Accession # /Req #	Identification	Collected	EtG	ETS	Other/Comments
110908-08187	JUAN JUAREZ	09/06/2011 JODI BROWN	5350 LCM	798 LCM	[EtG] Screen Cutoff = 100 ng/mL [EtG] Confirm Cutoff = 100 ng/mL [EtG] Confirmed by LC/MS/MS [ETS] Cutoff = 25 ng/mL [ETS] Confirmed by LC/MS/MS

Note: POS indicates positive result; (-) indicates negative/none detected result; QNS indicates specimen quantity not sufficient for testing.
EtG: Ethylglucuronide (EtG) ETS: Ethyl Sulfate (EtS)

Fax No : (208) 788-5541

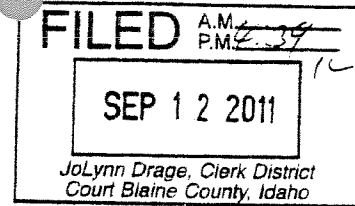
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Fax
vices

→ 1208/885541

D 1

ORIGINAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11-2386

ORDER TO REVOKE BOND

FINDINGS AND ORDER

Based upon the foregoing Motion to Revoke Bail having been laid before me by Matthew Fredback, Blaine County Deputy Prosecuting Attorney, the Court hereby finds probable cause to believe the Defendant has violated his conditions of release and hereby enters the following order.

It is hereby ordered that the Defendant's bond of \$2,500.00 be hereby revoked and the Defendant held without bond until he is brought before this Court for further proceedings. :

- ☐ a summons be issued compelling the appearance of the defendant so that the defendant may be dealt with according to law.
- ☒ a warrant be issued for the arrest of the defendant so that the defendant may be immediately brought before the Court and dealt with according to law.

SO ORDERED this 12 day of September, 2011.

R. Ted Israel
Magistrate Judge

CERTIFICATE OF SERVICE

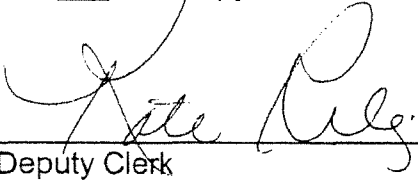
I HEREBY CERTIFY that on this 12 day of September, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting
Attorney's Office
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy

Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Deputy Clerk

COURT MINUTES

CR-2011-0002386

State of Idaho vs. Juan L Juarez

Hearing type: Preliminary

Hearing date: 9/14/2011

Time: 9:15 am

Judge: R. Ted Israel

Courtroom: Magistrate Courtroom-judicial Bldg

Court reporter:

Minutes Clerk: KATE

Tape Number: MC

Defense Attorney: Daniel Dolan

Prosecutor: Matthew Fredback

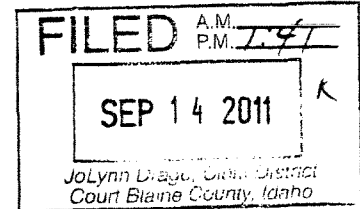
Counter #	
918	Case called. Defendant is present with Counsel. The State is represented by Counsel. Maria Djasran, Court's Interpreter, is present assisting the Court. Charge: DUI, repeat offense, felony.
919	State calls OFFICER JOSHUA COREY PRITCHARD of the Blaine County Sheriff's Office. He has been with BCSO for three years. Pritchard is P.O.S.T. certified. Mr. Dolan: Objection, hearsay. OVERRULED. Pritchard was dispatched on a report of suspected DUI. On June 18, 2011, Officer Pritchard was on patrol when he was contacted by Dispatch. He observed a white Chevrolet Blazer cross the fog line 3 times, activated his lights, pulled over Juan Juarez. Defendant is identified as the driver of the vehicle. Pritchard advised Juarez of the reason for the stop, inquired if he was "all right", was provided an international driver's license and a manuel. Prtichard could smell an odor of alcohol coming from the defendant's breath and noted Juarez had blood shot eyes. Juarez was asked if he had consumed any alcohol and he replied that he had. The driver said "Oh, I am drunk." and reported having consumed Budweiser and that he was coming from Shoshone. The conversation was in English and the defendant appeared to understand the English language. When asked to perform field sobriety tests the driver said "I am drunk Dude." When the driver exited the car he appeared to be very unstable. He declined to perform field sobriety tests saying he was drunk. The defendant was transported to St. Luke's in Ketchum where an ALS advisory was read to him prior to a St. Luke's employee drew blood using a blood kit provided by Officer Pritchard. The blood kit was sealed when Pritchard provided it for the draw. Officer Pritchard observed the draw, watched the tech agitate the vials to mix the contents, took possession of the vials, sealed them in the package and taken back to Blaine County Sheriff and placed in the evidence refrigerator. The blood was sent to the State Lab. Results of the blood draw were received back from the lab. STATE'S EXHIBITS 1 AND 2 are introduced and identified as the toxicology report from the State Lab. Exhibit 1 is offered.
935	Mr. Dolan: Examination in aid of objection to admission of State's 1. Defense objects to admission of this exhibit as the expiration date of the test kit is unknown.

	Mr. Fredback: Response. Mr. Fredback continues direct of Officer Pritchard. Officer Pritchard testifies the blood kit was not expired.
937	Mr. Dolan: Further exam in aid of objection. Officer Pritchard testifies his practice is to check the expiration date prior to using a kit.
938	Mr. Fredback: Exam is beyond scope and not relevant. Court inquires of Mr. Dolan re: relevance. Court allows the question.
939	Mr. Dolan continues exam in aid of objection. Officer Pritchard estimates he has been involved in about 12 blood draws. Officer Pritchard denies having any issues with remembering how a blood draw is to be conducted. Objection is renewed. COURT: STATE HAS PROVIDED ADEQUATE FOUNDATION AND EXHIBIT 1 IS ADMITTED.
940	Mr. Fredback concludes direct exam: Officer Pritchard states everything he has testified to occurred in Blaine County, State of Idaho.
941	Mr. Dolan: CROSS EXAMINATION OF OFFICER PRITCHARD. Officer Pritchard reviewed his report and the video of the stop prior to testifying today. He did not review the audio of the hospital interview. Mr. Juarez provided a passport in addition to an international driver's license at the time of the stop. Officer Pritchard testifies that Mr. Juarez speaks with a heavy accent that he assumed was Spanish. When Mr. Juarez was asked to perform the field sobriety tests, he basically said take me in, I'm drunk. Officer Pritchard testifies the unsteadiness observed in the Defendant after he exited the vehicle was not due to his being cuffed. Officer Pritchard testifies that the Defendant was not offered a breath test as Dispatch had advised Pritchard of prior DUI offenses. It is the practice of BCSO to use blood draws for suspected felony DUI's rather than a breath test. This is not BCSO required procedure. Mr. Fredback: Objection, relevance. Mr. Dolan responds. COURT: THE OFFICER'S OPINION AS TO WHICH TEST IS MORE ACCURATE IS IRRELEVANT; SUSTAINED.
	Mr. Dolan inquires further re: Pritchard reporting that the Defendant refused to take a breath test. Officer Pritchard does not recall making such a statement. Pritchard did not take the Defendant's failing to submit to field sobriety tests as a refusal.
949	Witness is excused.
956	Mr. Fredback: Exhibits 2 and 3 are introduced and identified: STATE'S EXHIBIT 2 is a packet from the State of Nevada for a 2007 DUI conviction. STATE'S EXHIBIT 3 is a packet from Placer County California for an excessive DUI in 2007
	Mr. Dolan: No objection to the admission of State's 2 and 3. EXHIBITS 2 AND 3 ARE ADMITTED.
	Mr. Fredback: Submits the matter to the Court.
959	Mr. Dolan moves to dismiss the case as the State has not provided any evidence that the Nevada and California DUI's conform to Idaho DUI law. The waiver of rights form in Nevada does not include a waiver of Jury Trial. Nevada does not allow jury trial for DUI as is allowed in Idaho.

1003	Mr. Fredback: Response: State vs Moore, 2010 Court of Appeals case cited. Responsive Argument. 2011, Supreme Court Case State vs. Howard cited; addresses conformance with California DUI law.
1008	COURT HAS LISTENED TO THE TESTIMONY OF THE WITNESS. STATE'S BURDEN ADDRESSED. THE DRIVING PATTERN OF THE DEFENDANT, THE OBSERVATIONS OF THE POLICE OFFICER, THE ADMISSIONS OF THE DEFENDANT AND STATE'S EXHIBIT 1 PRESENT PROBABLE CAUSE TO BELIEVE ON THE DATE CHARGED THE DEFENDANT WAS DRIVING UNDER THE INFLUENCE OF ALCOHOL. REGARDING A FELONY CHARGE: STANDARD AT THIS LEVEL IS THAT THEY ARE SUBSTANTIALLY CONFORMING JUDGMENTS. STATE'S 3 INCLUDED A MISDEMEANOR COMPLAINT FOR DUI: .08 or higher. DEFENDANT ENTERED A NOLO CONTENDRE PLEA TO THE OFFENSE, ESSENTIALLY IN COMPLIANCE WITH IDAHO STATUTE. STATE'S 2, DUI ADMONISHMENT OF RIGHTS DESCRIBES DUI IN NEVADA: 3 WAYS TO BE IN VIOLATION—PHYSICAL CONTROL WHILE UNDER THE INFLUENCE, BLOOD ALCOHOL EXCEEDING .08 OR BLOOD ALCOHOL EXCEEDING .08 WITHIN 2 HOURS, SUBSTANTIALLY CONFORMING JUDGMENT TO IDAHO STATUTE FOR PROBABLE CAUSE PURPOSES. THE LACK OF WAIVER OF RIGHT TO JURY TRIAL IS SOMETHING TO BE ADDRESSED BY DISTRICT COURT. PROBABLE CAUSE IF FOUND AND THE DEFENDANT IS BOUND OVER TO DISTRICT COURT. The Court notes the State has filed a Motion to Revoke Bond a couple of days ago and a Warrant of Arrest was issued.
1014	Mr. Dolan addresses the Court regarding the warrant. Defendant denies consuming alcoholic beverages during the time frame. He was ill and treating his symptoms with over-the-counter medications, including Nyquil. Defendant has been out of custody for an extended period and has fully complied with the testing portion of his conditions without incident. Defendant has been able to go a long period of time without drinking. When he drinks, he drinks to excess. Defendant has been going to work every day working for a landscaping company. Defense requests the defendant be allowed to remain on bond.
1020	Court inquires of Mr. Dolan if he has seen the reports from the lab. Mr. Dolan has not seen the levels. Mr. Dolan reviews the document further.
1021	Mr. Fredback: 5000 is very high metabolite reading. District Court does not consider ETG's below 1000 as they are inconsistent. Below 1000 can be different substances that would give positive alcohol readings.
1023	Mr. Dolan: With Nyquil, has a high alcohol content, approximately 20%.
1024	Mr. Fredback: Responds to the Court's question. In the alleged crime .31 BAC, very high. In the Nevada case, there was a violation of conditions of release that resulted in a Warrant that is still outstanding. The California DUI is an excessive, over .15. State's concern is that the defendant has been drinking and driving with exceptionally high BAC. It is unknown whether the defendant can afford a SCRAM unit. If he is drinking and driving, safety is an issue. State requests revoking the bond and incarcerating the defendant or amending the Conditions of Release to include a SCRAM unit.
1028	RECESS to allow counsel time to investigate whether a SCRAM unit is available.
1036	RECONVENE, ALL PARTIES PRESENT. There is a SCRAM unit that can be installed at 1:30 p.m. today for \$6-\$10. Assuming that a bond revocation has not been sent out, the Court reinstates the

	bond on the same terms and conditions with the additional requirement that the defendant will have a SCRAM unit installed. Court addresses the defendant that any use of alcohol in any form may lead to his arrest. WARRANT IS QUASHED. ORDER BINDING OVER IS SIGNED. DEFENDANT IS REQUIRED TO APPEAR IN DISTRICT COURT AND ENTER PLEA OF GUILTY OR NOT GUILTY.
	ADJOURN

ORIGINAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11-2386

ORDER BINDING OVER

THIS MATTER came before the Court for a preliminary hearing on the 14th day of September, 2011, on a complaint charging the Defendant with the felony offense of DRIVING UNDER THE INFLUENCE (THIRD OFFENSE WITHIN TEN (10) YEARS, in violation of Idaho Code §§ 18-8004, 18-8005(6), 18-8005(10).

The Court, having considered the testimony, other evidence and argument of counsel, finds based upon substantial evidence upon every material element of the aforementioned charged offense, that such offense was committed and that there is probable or sufficient cause to believe the Defendant committed such offense.

Accordingly, pursuant to Idaho Criminal Rule 5.1(b), the Court hereby orders that the Defendant be held to answer in the District Court on said felony charge and is hereby bound over on the same to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

DATED this 14 day of September, 2011.

A handwritten signature in black ink, appearing to read "R. Ted Israel".

R. Ted Israel
Magistrate Judge

CERTIFICATE OF SERVICE

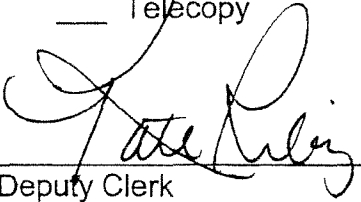
I HEREBY CERTIFY that on this 14 day of September, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting
Attorney's Office
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333

☐ U.S. Mail, Postage Prepaid
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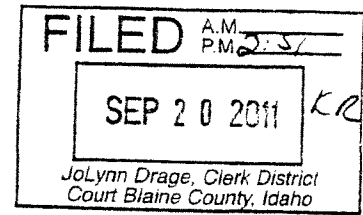
Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Deputy Clerk

ORIGINAL



Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11-2386

INFORMATION

Plaintiff State of Idaho, pursuant to Idaho Criminal Rule 7, by this Information charges the Defendant, JUAN L. JUAREZ, with the following crimes:

COUNT ONE

Part One

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive or was in actual physical control of a motor vehicle upon a highway, street or bridge, or upon public or private property open to the public, to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, while under the influence of alcohol, drugs or other intoxicating substances to a degree which impaired his ability to operate a motor vehicle and/or was driving with an alcohol concentration of

.08 or more as determined by analysis of blood, urine or breath, in violation of Idaho Code §§ 18-8004(1)(a), DRIVING UNDER THE INFLUENCE.

COUNT ONE

Part Two

That the Defendant, JUAN L. JUAREZ, did unlawfully commit those acts set forth in Count One, Part One, of this Complaint at a time when the Defendant had pled guilty to or was found guilty of, within the previous ten (10) years, at least two violations of a substantially conforming foreign criminal violation, to-wit:

1. That the Defendant, JUAN L. JUAREZ, on or about the 11th of July, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, in violation of Nevada Revised Statutes § 484C, a MISDEMEANOR, in the State of Nevada;

2. That the Defendant, JUAN L. JUAREZ, on or about the 17th of September, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, a MISDEMEANOR, in violation of California Vehicle Code § 23152, in the State of California;

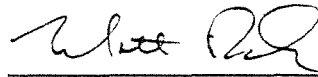
in violation of Idaho Code §§ 18-8004, 18-8005(6), 18-8005(10), DRIVING UNDER THE INFLUENCE (THIRD OFFENSE WITHIN TEN (10) YEARS), a FELONY.

COUNT TWO

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive and/or was in actual physical control of a motor vehicle; to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, knowing his driver's license was suspended in Idaho, in violation of Idaho Code § 18-8001, DRIVING WITHOUT PRIVILEGES, a MISDEMEANOR.

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Idaho.

DATED this 20 day of September, 2011.



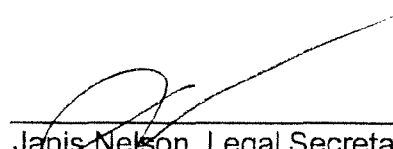
Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☒ Overnight Mail
☒ Telecopy



Janis Nelson, Legal Secretary

COURT MINUTES

CR-2011-0002386

State of Idaho vs. Juan L Juarez

Hearing type: Arraignment

Hearing date: 9/26/2011

Time: 10:05 am

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: DC

Defense Attorney: Daniel Dolan

Prosecutor: Matthew Fredback

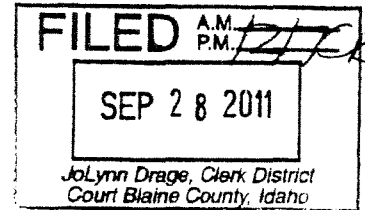
Interpreter: Maria Djasran

Counter #	
10.03	Counsel present, Def. present with Interpreter.
	Court introduces the case, reviews the Info. Cnt. 1- DUI (felony), Cnt 2: DWP(misd).
10.04	Mr. Dolan waives formal reading of the Info.
	Court reviews the maximum and min. penalties. Cnt. 1: 10 yrs. prison or 30 days jail, fine of \$5,000, driving privileges suspended for 1-5 years, and must use and interlock device while operating a motor vehicle after the suspension period. Cnt. 2: 2 days jail or up to 6 months jail, fine of \$1000, driver's license would be suspended up to 180 days which would add to any current suspension period. Gives notification of subsequent penalties.
10.09	Def. pleads not guilty.

	Court sets 3 day J.T. for 1/10/12 and a PTC for 12/19/11 at 9a.m.
10.11	Recess

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11-2386

AMENDED INFORMATION

Plaintiff State of Idaho, pursuant to Idaho Criminal Rule 7, by this Amended Information charges the Defendant, JUAN L. JUAREZ, with the following crimes:

COUNT ONE

Part One

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive or was in actual physical control of a motor vehicle upon a highway, street or bridge, or upon public or private property open to the public, to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, while under the influence of alcohol, drugs or other intoxicating substances to a degree which impaired his ability to operate a motor vehicle and/or was driving with an alcohol concentration of

.08 or more as determined by analysis of blood, urine or breath, in violation of Idaho Code §§ 18-8004(1)(a), DRIVING UNDER THE INFLUENCE.

COUNT ONE

Part Two

That the Defendant, JUAN L. JUAREZ, did unlawfully commit those acts set forth in Count One, Part One, of this Complaint at a time when the Defendant had pled guilty to or was found guilty of, within the previous ten (10) years, at least two violations of a substantially conforming foreign criminal violation, to-wit:

1. That the Defendant, JUAN L. JUAREZ, on or about the 11th of July, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, in violation of Nevada Revised Statutes § 484C, a MISDEMEANOR, in the State of Nevada;

2. That the Defendant, JUAN L. JUAREZ, on or about the 17th of September, 2007, was found guilty of or pled guilty to DRIVING UNDER THE INFLUENCE, a MISDEMEANOR, in violation of California Vehicle Code § 23152, in the State of California;

in violation of Idaho Code §§ 18-8004, 18-8005(6), 18-8005(10), DRIVING UNDER THE INFLUENCE (THIRD OFFENSE WITHIN TEN (10) YEARS), a FELONY.

COUNT TWO

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did drive and/or was in actual physical control of a motor vehicle; to-wit: a 2000 Chevrolet Blazer bearing Idaho license plate E103010, at or near milepost 104 on State Highway 75 in Blaine County Idaho, knowing his driver's license was suspended in Idaho, in violation of Idaho Code § 18-8001, DRIVING WITHOUT PRIVILEGES, a MISDEMEANOR.

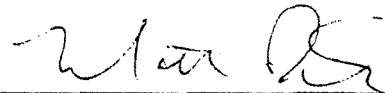
COUNT THREE

That the Defendant, JUAN L. JUAREZ, on or about the 18th day of June, 2011, in the County of Blaine, State of Idaho, did willfully and unlawfully possess an open

container of alcohol in a motor vehicle located on or at or near milepost 104 on State Highway 75 in Blaine County, Idaho, in violation of Idaho Code § 23-505(2), POSSESSION OF AN OPEN CONTAINER OF ALCOHOL IN A MOTOR VEHICLE, a MISDEMEANOR.

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Idaho.

DATED this 20th day of September, 2011.



Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

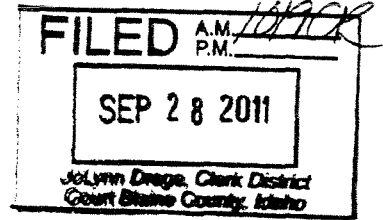
I HEREBY CERTIFY that on this 28th day of September, 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Morgan Drage for
Janis Nelson, Legal Secretary

Fifth Judicial District Court, State of Idaho
In and For the County of Blaine
201 2nd Avenue South, Suite 106
Hailey, Idaho 83333



STATE OF IDAHO

Plaintiff,

vs.

Juan L Juarez

Shenandoah 39 Apt A 202

Hailey, ID 83333

Defendant.

) Case No: CR-2011-0002386

) NOTICE OF TRIAL SETTING,

) PRE-TRIAL CONFERENCE, AND

) ORDER GOVERNING FURTHER

) PROCEEDINGS

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Pretrial Conference Monday, December 19, 2011 09:00 AM
Judge: Robert J. Elgee

Jury Trial Tuesday, January 10, 2012 09:00 AM
Judge: Robert J. Elgee

IT IS HEREBY ORDERED that the parties must comply with the following requirements:

1. **Pre-Trial Motions:** ALL pre-trial motions must be filed within 28 days from this date, and heard within 42 days.
2. **Discovery:** Must be completed within 42 days of this date.
3. **Pre-Trial Conference:** The parties shall conduct a settlement conference before the date of the pre-trial conference. The day of the pre-trial conference, the parties must be prepared to inform the Court whether the case is going to trial and the results of the settlement negotiations.
4. **Plea Bargain Agreements:** All plea bargain agreements shall be reduced to writing before the date of sentencing or dismissal. The agreement must be signed by the attorneys for both parties and by the defendant.
5. **Change of Plea:** The defendant may use the pre-trial conference date to change his/her plea if notice is given to the Court.
6. **Motions to Continue:** All motions to continue the trial date must be in writing and shall state the reason for the motion. Motions to continue made by the Defense shall be signed by the Defendant. All motions and stipulations for a continuation shall be accompanied by an order to vacate and reset the trial and pre-trial conference. The dates for rescheduling the trial and pre-trial conference shall be left blank so that the Court may fill them in.
7. **Jury Instructions.** Jury instructions and a list of witnesses must be submitted by the parties to the Court at least 5 days before the trial date.
8. **Waiver of Speedy Trial:** A written waiver of speedy trial must be signed by the Defendant and filed with the Court before the Court will schedule a trial date beyond the six-month period. The six-month period is calculated from the date of the District Court arraignment.
9. **Alternate Judges:** Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.C.R. 25 (a)(6). Notice is also given that if there are multiple defendants, any disqualification pursuant to I.C.R. 25(a)(1) is subject to a prior determination under I.C.R. 25(a)(3). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action: Judges Bevan, Butler, Crabtree, Elgee, Higer, Hurlbutt, Meehl, Stoker, Wood, Brody, St. Clair and Wildman.

Judge

A handwritten signature in black ink, appearing to read "Robert J. Elgee", written over a horizontal line.

NOTICE OF TRIAL SETTING, PRETRIAL CONFERENCE & ORDER
GOVERNING FURTHER PROCEEDINGS I

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, September 28, 2011.

Defendant: Juan L. Juarez

Mailed ☒ Hand Delivered ☐

Private Counsel:

Mailed ☒ Hand Delivered ☐

Daniel M. Dolan
P.O. Box 757
Ketchum ID 83340

Prosecutor: Jim Thomas Blaine County Prosecuting Attorney

Mailed ☐ Hand Delivered ☒

Dated: Wednesday, September 28, 2011

By: 
Deputy Clerk

COURT MINUTES

CR-2011-0002386

State of Idaho vs. Juan L Juarez

Hearing type: Pretrial Conference

Hearing date: 12/19/2011

Time: 8:59 am

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: DC

Defense Attorney: Daniel Dolan

Prosecutor: Matthew Fredback

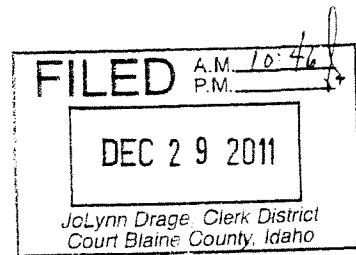
Interpreter: Maria Djasran

Counter #		
9.03	Counsel and Def. present with interpreter	
	Court introduces the case and reviews the Amended Info.	
	Mr. Dolan waives formal reading.	
	Court reviews the maximum penalties 10 years prison or a minimum of 30 days county jail, fine \$5,000, driving privileges are suspended for 1-5 years.	
	Mr. Dolan comments that this is a pretrial.	
	State clarifies that a misd. Count 3 was left off the original info. Def. has been arraigned on all charges.	
9.07	Mr. Dolan comments that the Def. is prepared to waive jury trial and have a court trial. The dispute is about the Def's previous record, which could be done as a motion to dismiss or limine or court trial. The Def. is contesting that this is	

	a felony charge.	
	Court clarifies.	
	Mr. Dolan comments that whether the State has to prove the allegations is up in the air.	
9.09	State has no problem waiving the jury, will be motioning up a Motion in Limine before the trial.	
	Court makes the trial a court trial.	
	Mr. Dolan requests keeping the trial date for 1/10.	
	Court comments, sets Court Trial for 1/10/12 at 1:30p.m.	
9.16	Def. waives is right to a jury trial.	
9.18	Recess	

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue South, Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

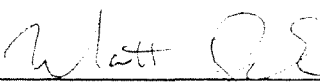
STATE OF IDAHO,)	
	)	Case No. CR-11-2386
Plaintiff,)	
	)	STATE'S MOTION IN LIMINE
vs.)	
)	
JUAN L. JUAREZ,)	
)	
Defendant.)	
_____)	

COMES NOW Plaintiff State of Idaho, by and through the Blaine County Prosecuting Attorney's Office, and HEREBY moves the Court for an Order in limine.

The State seeks the Court's *in limine* ruling that the Defendant's two prior Driving Under the Influence convictions within ten years are substantially confirming foreign criminal violations as included in I.C. §§ 18-8005(6), 18-8005(10).

Oral argument is requested.

DATED this 29 day of December, 2011.



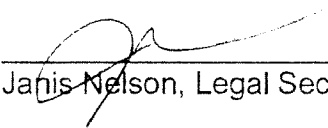
Matthew Fredback, ISBN 7262
Blaine County Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December 2011, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, ID 83340

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy



Janis Nelson, Legal Secretary

COURT MINUTES

CR-2011-0002386

State of Idaho vs. Juan L Juarez

Hearing type: Court Trial/ Motion in Limine

Hearing date: 1/10/2012

Time: 1:28 pm

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: MC

Defense Attorney: Daniel Dolan

Prosecutor: Matthew Fredback

Interpreter: Mary Jo Palma

Counter #	
1.40	Counsel present, Def. present with Interpreter.
	Court introduces the case.
	Interpreter's oath is on file with the court.
1.41	Mr. Dolan comments that a jury trial has been waived. The Def. will be pleading guilty to Part 1 of the Information. The State still has to prove Part 2. Understands that the State will dismiss Count 2. Count 3 will be left for another day.
1.45	State comments, intended to file a motion in limine which is the important issue. Wants a ruling on the out of state DUI convictions, and after that decision has been made then it can be decided if a court trial is needed.
	Mr. Dolan responds about the continued court trial for identification of the Def.

	State responds.
	Mr. Dolan thought the trial was going to be done today.
1.49	Court comments about the confusion, reads from the pretrial court minutes. Will hear the Motion in Limine today and will give the State a continuance re: the court trial.
	Mr. Dolan requests that Discovery be closed at this time, doesn't want more witnesses to be added or evidence.
1.53	State agrees.
	Court has evidence disclosure and discovery closed.
	State clarifies about disclosure.
	Mr. Dolan states concerns about the identification issue.
1.55	Court comments.
	Mr. Dolan only has the disclosure of the arresting officer.
	State has every intention to disclose the records custodian.
	Mr. Dolan doesn't have a disclosure or the documents from the jail.
	Court will hear the Motion in Limine today, any other issues need to be address at a later time. Disclosures need to be done immediately. At the end of today there will be a briefing schedule and a court trial will be set. Court will take the plea of guilty to Cnt.1 Part 1
1.59	Def. wishes to plead guilty to Cnt.1 Part 1: DUI
	Court inquires about a rights waiver form.
	Mr. Dolan had the Def. just read the rights waiver form. Has a copy of the Amended Information.
	Court has the Interpreter read Count 1 Part 1 of the Amended Information to the Def.
2.02	Court reviews the max. penalties for a misdemeanor charge
	Counsel agree the penalties are the ones that are in effect at the time of the

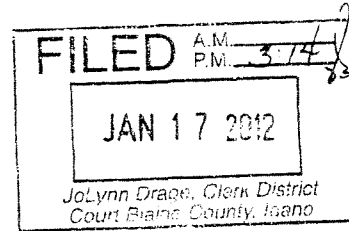
	offense
	Court continues to review the penalties: 1 st offense: 6 mo. jail \$1,000 fine and dl suspension for 30 days, permit maybe granted 60-150 days, 2 nd offense: 10 days jail min. up to 1 year, fine of \$2,000, dl suspension for 1 year, must use an interlock device. Felony penalties: 10 yrs. prison, min 30 days jail, fine of \$5,000, dl suspension for 1-5 years, must use and interlock device while operating a motor vehicle following suspension period.
2.05	Def. understands the penalties and what he is charged with. Def. pleads guilty, understands the rights that he is waiving by pleading guilty.
2.09	Mr. Dolan comments that if this is a felony the most the State will ask for is a Rider.
	State agrees.
	Court continues to question the Def., wishes for the Court to accept his plea of guilty. Was driving a motor vehicle on Hwy. 75 in Blaine Co. and was under the influence at the time of driving and tested higher than a .08.
	Court accepts the Def's plea of guilty to Cnt 1 part 1, finds that it was knowingly and voluntarily made and it was made on a factual basis. Court will now hear the Motion in Limine
	State moves to dismiss Count 2: driving without privileges.
	Court has the State prepare and order of dismissal of Count 2.
2.13	State addressed the motion in limine, presents State's Exh. 1 & 2- premarked- ID -prior offenses within the last 10 years. Also presents the statute for the individual states Nevada: 484.379 & 484.3792 & California: 23152 all for 2007.
	Court inquires.
	State also has Idaho case law that will be referred to in argument.
	Court comments about rules re: judicial notice
2.19	Mr. Dolan has no objection.
	Court will have them marked so that it is clear to the appellant court.
	Mr. Dolan comments about in the State of Nevada the Def. doesn't have a right to

	a jury trial
	State stipulates that is the law of Nevada.
2.24	Mr. Dolan has no objection to Exh.1 & 2
	Court ADMITS EXH 1 & 2
2.26	Court wants to preserve the law of Nevada and California for the record. State's Exh.3 premarked- id- Nevada Law, Exh. 4 premarked-id- Nevada Law & Exh. 5 premarked- id- California Law.
	Mr. Dolan has no objection to Exh. 3, 4 & 5
	Court ADMITS EXH. 3, 4, & 5
2.28	State addresses the Motion in Limine, reviews the issue re: Nevada not allowing a Def. to a jury trial for a first offense DUI, cites case law. The Def. had a defense attorney in both Nevada and California. Therefore re: a constitutional argument it doesn't matter if another state doesn't permit a jury trial. Adds that the Def. admitted to the charge. Addresses the substantially conforming argument, cites Idaho Statute and case law, presents copies to the Court. The only thing the Court has to do is compare elements of the statutes in the foreign judgment state. Idaho has a lower standard for the definition of DUI compared to Nevada & California (it is easier to get a convicted in Idaho).
2.54	Mr. Dolan responds, clarifies that the Court is not ruling from the bench.
	Court agrees if counsel would like to brief the issues.
	Mr. Dolan continues, addresses the constitutional argument, believes that if the Def. did not have the right to a jury trial it doesn't allow for that conviction to be used as a prior conviction for enhancement. Addresses the substantially conforming argument, it matters what is under the per-say statute and the language between states. There are differences in the time of testing between other states (Nevada & North Dakota).
3.12	State will file a brief on the constitutional argument, responds on the substantially conforming argument re: only violating the per-say statute, in Nevada the judgment doesn't differentiate the definition of per-say or DUI. Nevada and California criminalize driving under the influence not the BAC at the time of the test. It is not required that the other state's law be identical it only has to be substantially conforming.

3.17	Court inquires about the briefing schedule.
	State suggests that Mr. Dolan reply and the State can reply to the Defenses reply.
	Mr. Dolan doesn't mind going first in the writing portion, but wants the ability to respond if there is something in the State's reply.
	Court takes the State's 3 cases as the opening brief, Defenses brief, State's reply, and Defenses reply. Oral argument can be done at the time of trial.
	Court has Defense brief due 1/30/12, State's reply brief due 2/13/12, evidence/ testimony needs to be disclosed immediately court trial set for 3/9/2012 at 9a.m.
3.24	Mr. Dolan comments that the Def. is on a SCRAM unit and it is getting expensive because of his job. Probation might be able to help, otherwise a motion might be filed.
3.25	Recess

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ

Defendant.

Case No. CR-11-2386

STATE'S MOTION TO DISMISS
COUNT TWO

Plaintiff State of Idaho moves the Court pursuant to Idaho Code § 19-3504 and Idaho Criminal Rule 48(c) for its order dismissing Count Two of the above-captioned criminal action.

The reasons for the dismissal are: (a) pursuant to a plea agreement between the parties; and (b) dismissal would serve the ends of justice and the effective administration of the Court's business.

DATED this 17 day of January, 2012.

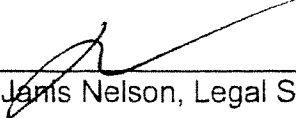
Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of January, 2012, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

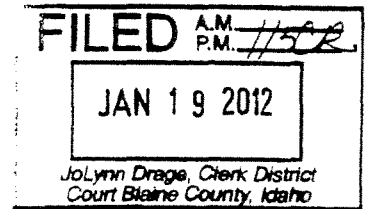
Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☐ U.S. Mail, Postage Prepaid
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Janis Nelson, Legal Secretary

ORIGINAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-11-2386

ORDER GRANTING MOTION
TO DISMISS COUNT TWO

The Court, having considered the Motion to Dismiss Count Two, and good cause appearing therefor, HEREBY ORDERS that Count Two in the above-captioned criminal action be dismissed.

DATED this 18 day of January, 2012.

A handwritten signature in black ink, appearing to read "Robert Elgee".

Robert Elgee
District Judge

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 19 day of January, 2012, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting
Attorney's Office
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy

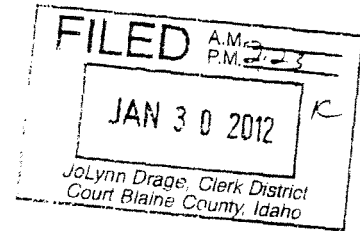
Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Deputy Clerk

DANIEL M. DOLAN
Attorney At Law
671 First Avenue North
Post Office Box 757
Ketchum, ID 83340
Telephone: 208-726-3005
Facsimile: 208-726-1187
Attorney for Defendant
Idaho State Bar # 4147



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR 2011 2386
vs.)	
	)	Defendant's Memorandum
Juan Juarez,)	
Defendant.)	
_____)	

The Plaintiff herein has raised the issue that the purported Judgment of Conviction from Nevada should be admitted as a substantially conforming foreign criminal violation.

The state has introduced Exhibit 1, a Judgment of Conviction packet from Nevada consisting of 7 pages [bates stamp pages 39-45]. In the Judgment of Conviction packet from Nevada on page 3 [bates stamp page 41] provides:

DUI ADMONISHMENT OF RIGHTS

...AND/OR while having a concentration of alcohol of 0.08 or more in my blood
or breath; AND/OR while having a concentration of alcohol of 0.08 or more in my
blood or breath within two hours after driving or being in actual physical control
of a motor vehicle, in violation of NRS 484.379.

The state has also submitted Exhibit 2, Nevada Statutes § 484.379 in this matter.
The pertinent language of the submitted statute is:

§ 484.379. 1 part (c):.

- (c) Is found by measurement within 2 hours after driving or being in actual physical control of a motor vehicle to have a concentration of alcohol of 0.08 or more in his blood or breath, to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

The language which the Defendant maintains causes that the Nevada statute to not be a substantially conforming foreign criminal violation is:

while having a concentration of alcohol of 0.08 or more in my blood or breath within two hours after driving or being in actual physical control of a motor vehicle, in violation of NRS 484.379.

Compared to the Idaho code § 18-8004 (1) (a) which provides:

(1) (a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, ***to drive or be in actual physical control of a motor vehicle within this state***, whether upon a highway, street or bridge, or upon public or private property open to the public. (Emphasis added)

To put this simply the Idaho law requires the intoxication to be at the time of driving while the Nevada statute is not concerned with the concentration at the time of driving only the concentration at the time of the test.

In Commonwealth of Virginia v. Danny Ray Avers, 17 Va. App. 401; 437 S.E. 2d 580 1993 Va. App; (Attachment A) the Virginia court looked the same issue as presented here and ruled that the North Carolina statute as compared to the Virginia statute was not a substantially confirm statute for the purpose of enhancing a DUI to a felony based upon the North Carolina conviction. In reaching their decision the Virginia Court reasoned as follows.

To be a substantially conforming statute does not mean that [the other] state's law must substantially conform in every respect to Virginia law. Only that the prohibition of the other state's law under which the person was convicted must substantially conform to Virginia's law. In making the determination the court looked at the elements of the two statutes rather than to look at the offender's conduct.

The Virgin court went on to state, if a conviction in another state is based on conduct which is not a violation of Virgin law than to consider it to enhance a Virginia DUI would without authority expand the scope of convictions which could be considered beyond that which the Virginia General Assembly specifically authorized. Therefore, another states law permitting a conviction for an act not constituting an offense under the Virgin DUI law is not a substantially conforming statute.

The Virginia Court recognized that the North Carolina Statue, (like the Nevada statute) contains a conclusive presumption that does not require that the accused have any particular blood alcohol concentration or impairment at the time of driving, so long as he consumed no additional alcohol between the time of driving and the time of the test.

The Virginia Court went on to state:

Thus under the North Carolina statute (or Nevada statute) a person whose blood-alcohol concentration, as a result of alcohol consumed before or during driving, was at some time after driving 0.10 or greater must have had some amount of

alcohol in his system at the time he drove and under the North Carolina statute that was enough to be guilty.

Under the Virginia and Idaho statutes the language is that it is unlawful to drive or operate a motor vehicle while such person has a blood alcohol concentration of 0.10, for Virginia, 0.08 for Idaho. The Virginia Court went on to state that the result of the subsequent alcohol test in Virginia is merely an evidentiary fact which creates a rebuttal presumption that the measurement accurately reflects the blood alcohol concentration at the time of driving.

In Virginia, as in Idaho, a defendant may introduce evidence that despite the blood alcohol reading at the time of the test his blood alcohol concentration was less than the legal limit at the time of driving. However, in North Carolina, as in Nevada, such evidence would be irrelevant because of the conclusive presumption. Thus as a result of the conclusive presumption the North Carolina or Nevada statute was not a substantially conforming statute. This is based upon the fact that the North Carolina and Nevada statutes do not look at the concentration at the time of driving but rather North Carolina and Nevada are only concerned of the concentration at the time of the test.

In State v. Schmoll, 172 P.3d 555, 144 Idaho 800, (Idaho App. 2007) the Idaho Court of Appeals for the first time addressed the issue of what a substantially conforming foreign criminal violation is. The Court in its analysis looked at United States v. Thomas, 367 F.3d 194 (4th Cir.2004) a Virginia case which holding was similar to Ayers, supra,

The court in Schmoll stated:

The Fourth Circuit compared Maryland and Virginia statutes for enhancement purposes and determined that a prior Maryland conviction could not be used for enhancement purposes in Virginia. United States v. Thomas, 367 F.3d 194 (4th Cir.2004). The Virginia statute provided for use of foreign convictions to enhance a charge only if the statute on which the previous conviction is based

was substantially similar to Virginia Code § 18.2-266. Thomas, 367 F.3d at 197. In Virginia, a person could be guilty of DUI for driving or operating a motor vehicle either with a blood alcohol concentration (BAC) of 0.08 or more, or while under the influence of alcohol. Va.Code Ann. § 18.2-266 (2004). A test result of 0.08 or more created a rebuttable presumption that the person had such concentration while driving and was under the influence while driving. Thomas, 367 F.3d at 198.

Maryland prohibited driving under the influence of alcohol and driving under the influence of alcohol per se. Md.Code Ann., Transp. § 21-902(a) (2003). Driving under the influence of alcohol per se occurred when a person showed a BAC of 0.08 or more at the time of testing. M.C.A. § 11-127.1(a) (2002). This alternative for conviction did not create a rebuttable presumption that the person was in fact driving under the influence of alcohol, but rather gave rise to an independent conviction merely for having a BAC of 0.08 or more. Thomas, 367 F.3d at 198. Although a conviction in Maryland for driving under the influence would constitute a valid prior offense for enhancement purposes in Virginia, a conviction for driving under the influence per se would not. *Id.* The standard the court declared itself to be using to compare these two statutes was "substantially similar," but the court applied this standard very narrowly by turning the comparison on the issue of the rebuttable presumption. It was unclear which portion of the Maryland DUI statute served as the basis for the underlying conviction. *Id.* Therefore since Maryland's per se violation did not provide for a rebuttable presumption based on the blood alcohol concentration, the Maryland statute was deemed not to be substantially similar to the Virginia statute. *Id.*

The court in Schmoll then went on to hold:

This Court exercises free review over questions of law and the application and construction of statutes. *State v. O'Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122

(1990); State v. Reyes, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct.App.2003). In order to determine if the Montana statute under which Schmoll was previously convicted is substantially conforming to I.C. § 18-8004, the court must first determine which factors to compare and the standard with which to compare them. The legislature expressly provided that the focus of the comparison should be on the elements of the statutes, and not the specific conduct giving rise to the prior violation. See I.C. § 18-8005(8). The elements of the violation in each state must substantially conform to each other. The legislature did not define substantial conformity; however, where the language of a statute is plain and unambiguous, this Court must give effect [144 Idaho 804] to the statute as written, without engaging in statutory construction. State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); > State v. Burnight, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); State v. Escobar, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct.App.2000). The language of the statute is to be given its plain, obvious, and rational meaning. Burnight, 132 Idaho at 659, 978 P.2d at 219. Substantial conformity does not require exact correspondence between the two statutes. Black's Law Dictionary defines substantially to mean "[e]ssential; without material qualification ... in substance." BLACK'S LAW DICTIONARY 1428 (6th ed.1990). Conformity means "[c]orrespondence in ... use; agreement; harmony; congruity." Id. at 300.

The Court in Schmoll then went on to hold:

Although Idaho and Montana use the BAC test results differently, they both prohibit the same essential conduct--*driving while under the influence of alcohol*. Proving that a person is under the influence absent a BAC test requires a greater degree of impairment in Montana than in Idaho, since in Idaho, the ability to drive need only be impaired "to the slightest degree," while in Montana, the ability to drive "safely" is the quality that must be diminished. Impairment to the slightest degree is an equal or lesser standard than the diminished ability to drive safely test used by Montana; thus Montana's higher standard surpasses the

elements required for a violation in Idaho. These two statutes frame their prohibitions using the same language, requiring substantially conforming elements to be met to sustain a violation .(Emphasis added)

The Court of appeals next looked at this issue in State v. Moore 231 P.3d 532, 148 Idaho 887,, (Idaho App. 2010), and adopted the language of Schmoll when it stated:

Although Idaho and Montana use the BAC test results differently, they both prohibit the same essential conduct--driving while under the influence of alcohol.

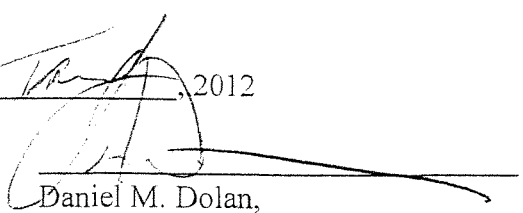
As pointed out in Ayers, supra and Thomas, supra, by the Virginia courts the difference between the Virginia law and the North Carolina and Maryland laws is the same as the difference between the Idaho and Nevada law and that is the Nevada statute and the Idaho statute prohibit different conduct. The Idaho law requires the intoxication to be at the time of driving while the Nevada statute is not concerned with the concentration at the time of driving only the concentration at the time of the test. Thus we ask you to adopt the same finding as the Virginia courts that from the plain face of the statute Idaho and Nevada are not SS# for the purpose of enhancement of this matter.

The other issue concerning the Nevada conviction is that Nevada does not allow a jury trial for a first offense DUI..

The United States Court of Appeals for the Ninth Circuit in United States v. Tighe 266 F.3d 1187; 2001, (9th Cir) Attachment B ruled that to be able to use a prior conviction to increase the maximum sentence in a criminal matter requires that in order to use the prior conviction the prior conviction needed to include the protection of the right to a jury trial .

For the same reasoning as set forth in Tighe this court should not allow the use of a Judgment of conviction to enhance a misdemeanor to a felony when the defendant in the prior proceeding did not have a right to a jury trial.

Dated this 30 day of March, 2012

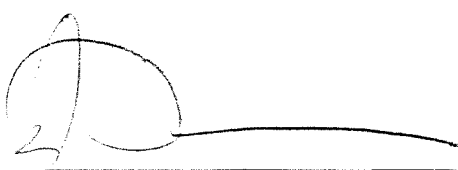

Daniel M. Dolan,
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on 1-30, 2012, I served a true and correct copy of the within and foregoing document and upon the attorney named below in the manner noted:

Blaine County Prosecuting Attorney
201 2nd Ave South Ste. 100
Hailey, Idaho 83333

- _____ By depositing copies of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.
- ✓ By hand delivering copies of the same to the office of the attorney at his offices in Hailey.
- _____ By sending facsimile copies of the same to said attorney at his facsimile number 208-788-5554.


Daniel M. Dolan,
Attorney at Law

COMMONWEALTH OF VIRGINIA v. DANNY RAY AYERS
Record No. 0636-92-3

COURT OF APPEALS OF VIRGINIA

17 Va. App. 401; 437 S.E.2d 580; 1993 Va. App. LEXIS 592; 10VLR 631

November 30, 1993, Decided

SUBSEQUENT HISTORY: [***1] As Corrected
December 6, 1993.

PRIOR HISTORY: FROM THE CIRCUIT COURT OF
MONTGOMERY COUNTY. Kenneth I. Devore, Judge.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: The state appealed an order of the Circuit Court of Montgomery County (Virginia), which vacated defendant's habitual offender adjudication by holding that another state's driving while intoxicated statute, *N.C. Gen. Stat. 20-138.1(a)(2)*, did not substantially conform to *Va. Code Ann. § 18.2-266* and could not be used as predicate offenses for an habitual offender adjudication in the state.

OVERVIEW: Defendant was convicted in the state of driving while intoxicated in violation of *Va. Code Ann. § 18.2-266(i)*, and he was adjudged a habitual offender on the basis that he had prior driving while intoxicated convictions in another state. Defendant then filed a motion to vacate the habitual offender order on the ground that his DUI convictions could not have been used as predicate offenses under the habitual offender act because the DUI statute under which he was convicted in the other state, *N.C. Gen. Stat. § 20-138.1(a)(2)*, did not conform to *Va. Code Ann. § 18.2-266(i)*. The motion was granted, and the state appealed. The court affirmed, holding that *N.C. Gen. Stat. § 20-138.1(a)(2)* did not conform to *Va. Code Ann. § 18.2-266(i)*. *N.C. Gen. Stat. § 20-138.1(a)(2)* contained a conclusive presumption that allowed a conviction of anyone with a blood alcohol concentration of 0.10 percent or higher at the time of the test. The driver's blood alcohol concentration at the time of driving was irrelevant. On the other hand, *Va. Code Ann. § 18.2-266(i)* allowed a defendant to introduce evidence to show that his blood alcohol concentration at the time of driving was less than 0.10 percent.

OUTCOME: The court affirmed the order of the trial court vacating defendant's driving while intoxicated habitual offender adjudication.

CORE TERMS: driving, habitual offender, concentration, blood alcohol, twice convicted, time of driving, consumed, conform, alcohol, conclusive presumption, predicate, Habitual Offender Act, substantially similar, case law, administered, conforming, vacation, drive, conformity

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: Jeffrey A. Spencer, Assistant Attorney General (Stephen D. Rosenthal, Attorney General, on briefs), for appellant.

Marcus H. Long, Jr. (Frederick M. Kellerman, Jr., on brief), for appellee.

JUDGES: Present: Judges Koontz, Elder and Fitzpatrick.

OPINIONBY: LARRY G. ELDER

OPINION: [**580] [*402]

OPINION BY JUDGE LARRY G. ELDER

The Commonwealth appeals from the trial court's vacation of Danny Ray Ayers' habitual offender adjudication. It argues on appeal that the trial court erred in holding that North Carolina's DUI statute, under which appellee was twice convicted, does not substantially conform to *Code § 18.2-266*, and [**581] could not be used as predicate offenses for an habitual offender adjudication in Virginia. For the reasons set forth below, we affirm the trial court's vacation of the adjudication.

Appellee was declared an habitual offender under Virginia law on February 7, 1992, based on three convictions rendered against him in the state of North Carolina. The certified copy of his driving record showed four North Carolina convictions, two for [***2] driving

under the influence (DUI) and two for driving on a suspended license. The DUI convictions were based on offenses committed after July 1, 1986, the effective date of the 0.10 percent "per se" provisions of *Code § 18.2-266(i)*. Appellee filed a motion to set aside the habitual offender order on the ground that his DUI convictions could not be used as predicate offenses under the Habitual Offender Act because the North Carolina statute under which he was twice convicted was not substantially similar to the Virginia statute. At the hearing on February 25, 1992, the trial court agreed and entered an order on March 3, 1992, setting aside appellee's habitual offender adjudication.

The sole issue in this case is whether the North Carolina DUI law under which appellant was twice convicted, *N.C. Gen. Stat. § 20-138.1(a)(2)*, "substantially conforms" to Virginia's DUI law, *Code § 18.2-266*. See *Code § 46.2-351(3)*. As we held in *Cox v. Commonwealth*, 13 Va. App. 328, 411 S.E.2d 444 (1991), "this does not mean that [the other] state's law ... must substantially conform in every respect to *Code § 18.2-266*. Only that prohibition of the other state's[***3] law under which the person was convicted must substantially conform." *Id.* at 331, 411 S.E.2d at 446. In making this determination, we look to the elements of the two statutes rather than to the offender's conduct:

If a conviction in another state is based on conduct which is not a violation of *Code § 18.2-266*, then to consider it under *Code § 46.2-351* would, without authority, expand the scope of the convictions which could be considered beyond that which the General Assembly specifically authorized. Therefore, another [*403]state's law permitting a conviction for an act not constituting an offense under *Code § 18.2-266* is not substantially conforming under *Code § 46.2-351*.

Id. The mere fact that both provisions are loosely referred to as per se statutes is insufficient to show substantial conformity.

In their briefs in this case, the parties argue the different interpretations given the current statutes and their predecessors. See *Shinault v. Commonwealth*, 228 Va. 269, 321 S.E.2d 652 (1984); *Davis v. Commonwealth*, 8 Va. App. 291, 381 S.E.2d 11 (1989).[***4] The Commonwealth urges us to interpret the Habitual Offender Act and its substantial conformity clause liberally to accomplish the Act's stated purpose of preserving public safety. Appellee asserts that the Act should be narrowly construed because it results in a forfeiture. We find it unnecessary to analyze either the case law or the Virginia Habitual Offender Act in depth, however, for an examination of the statutes themselves

n1 --with only minimal reliance on relevant case law-- makes clear that they are not substantially similar, regardless of whether we interpret the Act broadly or narrowly.

n1 Neither the Virginia nor North Carolina DUI statutes were amended between the time of appellee's convictions in North Carolina and his adjudication in Virginia as an habitual offender.

Appellee was twice convicted of DUI under *N.C. Gen. Stat. § 20-138.1(a)(2)*, which states as follows: "A person commits the offense of impaired driving if he drives any vehicle upon any highway ... after having consumed sufficient alcohol [***5] that he has, at any relevant time after the driving, an alcohol concentration of 0.10 or more." *N.C. Gen. Stat. § 20-4.01(33a)* defines "relevant time after the driving" as "any time after the driving in which the driver still has in his body alcohol consumed before or during the driving." A careful reading of this statute reveals that it contains a conclusive presumption that does not require that the accused have any particular blood alcohol concentration (BAC) at the time of driving, so long as he consumed no additional alcohol between the time of the stop and the time of the test.

A person whose blood-alcohol concentration, as a result of alcohol consumed before or during driving, was at some time after driving 0.10 or greater must have had [**582] some amount of alcohol in his system at the time he drove. The legislature has decreed that this amount, whatever it might have been, is enough to constitute an offense. This it may constitutionally do.

[*404] *North Carolina v. Rose*, 312 N.C. 441, 323 S.E.2d 339, 343 (N.C. 1984) (emphasis added).

Under the corresponding Virginia statute, by contrast, it is "unlawful for any person to drive or operate any motor vehicle[***6] ... while such person has a blood alcohol concentration of 0.10 percent or more" *Va. Code § 18.2-266(i)* (emphasis added). As we held in *Davis v. Commonwealth*, 8 Va. App. at 298, 381 S.E.2d at 15, a conviction under *Code § 18.2-266(i)* requires proof that the BAC of the accused was at least 0.10 percent "at the time he was driving." The result of the subsequently administered chemical test is merely "an evidentiary fact which creates a rebuttable presumption that the measurement accurately reflects the blood alcohol concentration at the time of driving." *Id.* (emphasis added)(footnote omitted). A defendant prosecuted under *Code § 18.2-266(i)* may introduce

evidence to show that, despite his blood alcohol concentration of at least 0.10 percent on a subsequently administered test, his blood alcohol concentration at the time of driving was less than 0.10 percent. See, e.g., *Kehl v. Commonwealth*, 15 Va. App. 602, 605-06, 426 S.E.2d 127, 129-30 (1993). In North Carolina, such evidence would be irrelevant, for the statute contains a conclusive presumption which allows conviction[***7] of anyone with a BAC of 0.10 percent at the time of the test. Although a defendant in North Carolina would still be

free to attack the accuracy of the test, his or her BAC at the time of driving is irrelevant.

The applicable North Carolina law contains a conclusive presumption; therefore the statute is not substantially conforming under *Code* § 46.2-351. Accordingly, because appellee's North Carolina DUI convictions could not properly be used as predicate offenses, the trial court did not err in vacating appellee's habitual offender adjudication.

Affirmed.

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. SHANNONWAYNE TIGHE, Defendant-Appellant.
No. 00-30263

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

266 F.3d 1187; 2001 U.S. App. LEXIS 20861; 2001 Cal. DailyOp. Service 8333; 2001 Daily Journal DAR 10289

June 13, 2001, Argued and Submitted, Seattle, Washington
September 24, 2001, Filed

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Montana. D.C. No. CR-00-00005-JSR. John S. Rhoades, District Judge, Presiding.

DISPOSITION: VACATED AND REMANDED.

CASE SUMMARY:

PROCEDURAL POSTURE: The United States District Court for the District of Montana sentenced defendant under the Armed Career Criminal Act (ACCA), 18 U.S.C.S. § 924(e), which mandates a minimum sentence of 15 years for any person who violates the felon-in-possession statute, 18 U.S.C.S. § 922(g), and who has three previous convictions for violent felonies or serious drug offenses. Defendant appealed his sentence.

OVERVIEW: Defendant claimed that his sentence could not stand because ACCA was unconstitutional in light of the Apprendi decision, and because two of the prior offenses upon which the district court relied as predicate offenses were improperly counted as such. On appeal, the court held that ACCA's use of prior convictions as sentencing factors was proper. It also held that defendant's prior South Dakota third degree burglary conviction was a generic burglary conviction that properly served as a predicate offense under ACCA. However, the court also held that Apprendi's narrow "prior conviction" exception was limited to prior convictions resulting from proceedings that afforded the procedural necessities of a jury trial and proof beyond a reasonable doubt. Thus, the "prior conviction" exception did not include nonjury juvenile adjudications. Therefore, the use of defendant's nonjury juvenile delinquency adjudication to increase his maximum statutory penalty violated Apprendi. As the sentence imposed was in excess of the applicable statutory maximum, the district court's error was not harmless.

OUTCOME: Defendant's sentence was vacated and the matter was remanded for resentencing.

CORE TERMS: juvenile, prior conviction, sentence, sentencing, jury trial, burglary, juvenile adjudication, reasonable doubt, indictment, felony, statutory maximum, predicate offense, predicate, resentencing, convicted, generic, violent felony, enhancement, sentencing enhancement, proved beyond, juvenile delinquency, maximum penalty, general rule, nonjury, qualify, sentenced, beyond a reasonable doubt, statutorily mandated, burglary conviction, violent felonies

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: Michael Donahoe, Assistant Federal Defender, Helena, Montana, for the defendant-appellant.

Bernard F. Hubley, Assistant United States Attorney, Helena, Montana, for the plaintiff-appellee.

JUDGES: Before: Betty B. Fletcher, Melvin Brunetti and Raymond C. Fisher, Circuit Judges. Opinion by Judge Fisher; Dissent by Judge Brunetti.

OPINIONBY: Raymond C. Fisher

OPINION: [*1189]
FISHER, Circuit Judge:

OVERVIEW This case is before us to review the legality of Tighe's sentence, imposed pursuant to the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), which mandates a minimum sentence of 15 years for any person who violates the felon-in-possession statute, 18 U.S.C. § 922(g), and who has three previous convictions for violent felonies or serious drug offenses. Tighe claims that his sentence cannot stand because ACCA is unconstitutional in light of the Supreme Court's recent decision in *Apprendi v. New Jersey*, 530 U.S. 466,

147 L. Ed. 2d 435, 120 S. Ct. 2348, and because two of the prior offenses upon which the district[**2] court relied as predicate offenses were improperly counted as such. Although we reject Tighe's claim that ACCA is facially unconstitutional, as well as his claim that his third degree burglary conviction was not a "violent felony" under ACCA, we agree that the district court violated Apprendi in counting as a predicate offense Tighe's previous juvenile adjudication. [*1190] Accordingly, we vacate Tighe's sentence and remand for resentencing.

BACKGROUND

On April 20, 2000, Tighe pled guilty to three counts of a three-count indictment charging him with bank robbery in violation of 18 U.S.C. § 2113(a) and (d) (Count I), being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(4) (Count II) and interstate transportation of a stolen vehicle in violation of 18 U.S.C. § 2312 (Count III). The indictment did not state that if he was found to be an armed career criminal, he would receive a minimum sentence of at least 15 years. n1 During the Rule 11 plea colloquy, the district court informed Tighe that if he had three prior convictions for a violent felony he would receive a sentence[**3] of not less than 15 years. In the Presentence Report ("PSR"), the Probation Office concluded that the ACCA sentencing enhancement should be applied to Tighe, and set forth five previous incidents of violent conduct. Tighe submitted objections to the PSR, including objections to whether or not his convictions qualified him for the enhancement. In a sentencing memo, Tighe also objected on the ground that Apprendi required that the three felony predicates be proven before a jury by a beyond-a-reasonable-doubt standard of proof.

n1 Although the government claims in its brief that the indictment indicated that Tighe was notified of the applicability of ACCA, the indictment makes no such reference to ACCA or its applicable minimum sentences.

At sentencing on August 28, 2000, the district court determined, over Tighe's objection, that he should be sentenced pursuant to U.S.S.G. § 4B1.4(b)(3)(B), which implements ACCA. The district court rejected Tighe's Apprendi objection. As for the three prior felonies required[**4] to trigger the armed career criminal enhancement, the district court first relied upon a 1993 Wyoming armed robbery conviction, which was agreed

upon by both parties. The court then found that a 1988 Oregon juvenile adjudication of a charge of reckless endangerment and first-degree robbery and unauthorized use of a motor vehicle counted as a prior conviction. Finally, the district court found that a 1992 South Dakota burglary conviction fell squarely within the "Taylor heartland of burglary offenses" and therefore counted as the third conviction necessary to apply the enhancement. Having found three countable convictions, the district court sustained Tighe's objection to a 1993 South Dakota grand theft conviction "in the interest of judicial economy." The court sentenced Tighe to 235 months imprisonment for Count I, 180 months for Count II and 120 months for Count III, all sentences to run concurrently. He timely appeals his sentence.

STANDARD OF REVIEW

The legality of a sentence is reviewed de novo. *United States v. Murphy*, 65 F.3d 758, 762 (9th Cir. 1995). The constitutionality of a statutory provision is reviewed de novo. *Taylor v. United States*, 143 F.3d 1178, 1179 (9th Cir. 1998). [**5] Whether a conviction is a predicate felony under section 924(e) is reviewed de novo. *United States v. Bonat*, 106 F.3d 1472, 1474 (9th Cir. 1997).

DISCUSSION

I. Constitutional Challenges to Tighe's Sentence under ACCA

Tighe brings both facial and as-applied constitutional challenges to his sentences [*1191] under ACCA. We address each challenge in turn.

A. Facial Challenge

The Armed Career Criminal Act, 18 U.S.C. § 924(e), mandates a minimum sentence of 15 years for anyone convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) who is found to have three previous convictions for a violent felony or a serious drug offense. 18 U.S.C. § 924(e)(1); *United States v. McElyea*, 158 F.3d 1016, 1018 (9th Cir. 1998). A defendant convicted of being a felon in possession of a firearm who has not been previously convicted of three violent felonies or serious drug offenses can be sentenced only to a maximum of 10 years. 18 U.S.C. § 924(a)(2). Tighe challenges ACCA on its face on the ground that it "allows for a substantial increase[**6] in [the] statutory maximum [sentence] based on prior convictions, the existence of which need only be proved to the judge by a preponderance of the evidence." He argues that under *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), the fact of his prior

convictions must be proved to a jury beyond a reasonable doubt.

Under the current state of the law, the Constitution does not require prior convictions that increase a statutory penalty to be charged in the indictment and proved before a jury beyond a reasonable doubt. *United States v. Pacheco-Zepeda*, 234 F.3d 411, 413-14 (9th Cir. 2001) ("The district court was entitled to consider any prior aggravated felony convictions in sentencing Pacheco-Zepeda for illegal reentry even though such conduct had not been charged in the indictment, presented to a jury, and proved beyond a reasonable doubt."); see also *Apprendi*, 530 U.S. at 490 ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (emphasis added)); [**7] *Almendarez-Torres v. United States*, 523 U.S. 224, 243-44, 140 L. Ed. 2d 350, 118 S. Ct. 1219 (1998). Accordingly, we affirm the district court's holding that ACCA is constitutional on its face.

B. As-Applied Challenge

Tighe argues that his sentence is unconstitutional because it was increased beyond the statutory maximum 10 years by the district court's finding that he was adjudicated a juvenile delinquent for committing a violent felony when he was 14 years old. He argues that *Apprendi* requires that the fact of his juvenile adjudication be charged in an indictment and found by a jury beyond a reasonable doubt.

One of the three predicate felonies used by the district court to enhance Tighe's sentence was a 1988 Oregon juvenile adjudication for reckless endangerment, robbery and unauthorized use of a motor vehicle. As a juvenile, Tighe was not afforded the right to a jury trial during the juvenile proceedings under either state or federal law. *McKeiver v. Pennsylvania*, 403 U.S. 528, 29 L. Ed. 2d 647, 91 S. Ct. 1976 (1971) (concluding that, in a juvenile delinquency adjudication, trial by jury is not a constitutional requirement); *State v. Reynolds*, 317 Ore. 560, 857 P.2d 842 (Or. 1993). [**8] Despite the lack of a jury trial and certain other procedural protections in the context of most juvenile proceedings, however, Congress has declared that juvenile delinquency adjudications involving violent felonies may nonetheless qualify as predicate "convictions" under ACCA. 18 U.S.C. § 924(e)(2)(C).

This is not the first time we have addressed the constitutionality of nonjury juvenile [**1192] adjudications as sentencing enhancements. In *United*

States v. Williams, 891 F.2d 212 (9th Cir. 1989), a pre-*Apprendi* case, we held that a sentencing judge's use of a prior, nonjury juvenile adjudication to enhance a defendant's sentence under the sentencing guidelines did not violate due process. Contrary to the government's assertion, however, *Williams* is not dispositive of the issue presently before us, because the nature of the sentencing decision reviewed in that case was fundamentally different from the sentencing decision Tighe now challenges. Although *Williams* addressed the use of prior juvenile adjudications to enhance a defendant's sentence, the defendant's ultimate sentence in that case was within the statutorily mandated range for [**9] the offense of conviction. In other words, William's prior juvenile adjudications were not used to increase the statutorily mandated maximum punishment to which he was exposed. n2

n2 In *Williams*, the statute under which the defendant was convicted, 18 U.S.C. § 2113(a), set the statutory maximum punishment at not more than 20 years incarceration. The defendant in that case was ultimately sentenced to 57 months, which was well below the statutory maximum.

In contrast, under ACCA the fact of Tighe's prior juvenile adjudication was used to increase his statutorily mandated maximum punishment from not more than 10 years, under 18 U.S.C. § 924(a)(2), to at least 15 years. A fact that is used to increase the maximum statutory penalty to which a defendant is exposed raises an entirely different set of constitutional concerns than a fact that merely affects where a sentence is fixed within an undisputed statutorily mandated range. See *United States v. Moss*, 252 F.3d 993, [**10] 2001 WL 637312 (8th Cir., 2001). Accordingly, because Tighe challenges the use of his prior juvenile adjudications to raise his statutory maximum punishment, *Williams* does not answer the question of whether the district court's use of such adjudications was constitutional.

As discussed in the preceding section addressing Tighe's facial challenge to ACCA, the Supreme Court has held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (emphasis added); see also *Jones v. United States*, 526 U.S. 227 at 243, n. 6, 143 L. Ed. 2d 311, 119 S. Ct. 1215. Thus, the Supreme Court has held that prior convictions are exempt from *Apprendi*'s general rule and, as

sentencing factors, need not be afforded the same procedural protections that attach to facts that are construed as elements of the charged crime. n3

n3 It should be noted that several states' recidivism statutes treat prior convictions as elements of a crime or provide for a jury determination of the fact of a prior conviction. See *Almendarez-Torres*, 523 U.S. at 246 (noting that some states treat prior convictions as elements of the related crime and submit the fact of a prior conviction to a jury); see generally *Spencer v. Texas*, 385 U.S. 554, 566-67, 17 L. Ed. 2d 606, 87 S. Ct. 648 (1967) (describing various states' procedures for proving prior convictions); *Oyler v. Boles*, 368 U.S. 448, 7 L. Ed. 2d 446, 82 S. Ct. 501 (1962) (examining West Virginia's procedure for proving prior convictions).

[**11]

At first blush, it may appear that Tighe's 1988 juvenile adjudication, which Congress has characterized as a "prior conviction" for the purposes of ACCA, falls precisely within Apprendi's exception for "the fact of a prior conviction," thus foreclosing Tighe's argument that the use of that adjudication at sentencing to increase his maximum penalty violated Apprendi. Such an analysis, however, ignores the significant constitutional differences between [*1193]adult convictions and juvenile adjudications. Compare *McKeiver*, supra, with *Duncan v. Louisiana*, 391 U.S. 145, 149, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968) (holding that the right of trial by jury is a fundamental right applicable to the states). Neither Apprendi, nor *Almendarez-Torres* -- the case upon which Apprendi relied to create the "prior conviction" exception to its general rule -- specifically addressed the unique issues that distinguish juvenile adjudications from adult convictions, such as the lack of a right to a jury trial in most juvenile adjudications. Thus, neither case squarely tackles the question that Tighe's appeal now raises: do prior juvenile adjudications, which do[**12] not afford the right to a jury trial, fall within the "prior conviction" exception to Apprendi's general rule that a fact used to increase a defendant's maximum penalty must be submitted to a jury and proved beyond a reasonable doubt? In order to answer this question, we must inquire into the scope of the term "conviction" as used by the Supreme Court in Apprendi, and the cases leading up to Apprendi.

In *Almendarez-Torres*, the case that first held prior convictions could be treated as sentencing factors that raise the maximum penalty of an offense, the Court addressed the constitutionality of a statutory provision

that authorizes an increased prison sentence for aliens re-entering the United States after deportation if the alien was convicted of a prior aggravated felony. *Almendarez-Torres*, 523 U.S. at 229. The defendant argued that the fact of his prior conviction, which was used to increase his statutorily mandated maximum punishment, was an element of his offense and should have been charged in the indictment. The Court rejected this argument, holding that the fact of the prior conviction was a sentencing factor, and not a separate element of the[**13] crime to be charged in the indictment. *Id.* at 243.

The next term, in *Jones v. United States*, 526 U.S. 227, 143 L. Ed. 2d 311, 119 S. Ct. 1215 (1999), the Court considered *Almendarez-Torres*' holding regarding the use of prior convictions in the context of emerging concerns about the viability of using facts not charged in an indictment nor proved to a jury beyond a reasonable doubt to increase the statutory maximum penalty to which a defendant is exposed. The Court explained why the fact of prior convictions was constitutionally distinct from other sentence-enhancing facts, such that it was permissible, under *Almendarez-Torres*, to use prior convictions to increase the possible penalty for an offense without treating them as an element of the current offense: "One basis for that constitutional distinctiveness [of prior convictions] is not hard to see: unlike virtually any other consideration used to enlarge the possible penalty for an offense ...a prior conviction must itself have been established through procedures satisfying the fair notice, reasonable doubt and jury trial guarantees." *Jones*, 526 U.S. at 249 (emphasis[**14] added). Thus, *Jones*' recognition of prior convictions as a constitutionally permissible sentencing factor was rooted in the concept that prior convictions have been, by their very nature, subject to the fundamental triumvirate of procedural protections intended to guarantee the reliability of criminal convictions: fair notice, reasonable doubt and the right to a jury trial.

One year later, in Apprendi, the Court further elaborated on the importance of such procedural protections being inherent in prior convictions used as sentencing factors to increase statutory penalties. The Court explained that "the certainty that procedural safeguards attached to the 'fact' of prior conviction" was crucial to [*1194] *Almendarez-Torres*' constitutional holding regarding prior convictions as sentencing factors. *Apprendi*, 530 U.S. at 488. The Court identified the right to a jury trial as one of the requisite procedural safeguards to which it referred: "There is a vast difference between accepting the validity of a prior judgment of conviction entered in a proceeding in which the defendant had the right to a jury trial and the right to require the prosecutor to prove guilt beyond[**15] a

reasonable doubt, and allowing the judge to find the required fact under a lesser standard of proof." *Apprendi*, 530 U.S. at 496. The Court's continued acceptance of Almendarez-Torres' holding regarding prior convictions, then, was premised on sentence-enhancing prior convictions being the product of proceedings that afford crucial procedural protections -- particularly the right to a jury trial and proof beyond a reasonable doubt.

Thus, as we read *Jones* and *Apprendi*, the "prior conviction" exception to *Apprendi*'s general rule must be limited to prior convictions that were themselves obtained through proceedings that included the right to a jury trial and proof beyond a reasonable doubt. Juvenile adjudications that do not afford the right to a jury trial and a beyond-a-reasonable-doubt burden of proof, therefore, do not fall within *Apprendi*'s "prior conviction" exception.ⁿ⁴

ⁿ⁴ It does not matter to this analysis whether any state provides the right to a jury trial for juvenile adjudications. It is undisputed that Tighe was not provided a jury when he was adjudged a juvenile delinquent in Oregon or when he was sentenced as an armed career criminal in this case.

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To the extent the government's argument can be construed as a request to extend *Apprendi*'s "prior conviction" exception to include prior nonjury juvenile adjudications on the basis of Almendarez-Torres' logic, we decline to do so. The *Apprendi* Court's serious reservations about the reasoning of Almendarez-Torres counsel against any extension of that opinion's holding:

Even though it is arguable the Almendarez-Torres was incorrectly decided, and that a logical application of our reasoning today should apply if the recidivist issue were contested, *Apprendi* does not contest the decision's validity and we need not revisit it for purposes of our decision today to treat the case as a narrow exception to the general rule we recalled at the outset. Given its unique facts, it surely does not warrant rejection of the otherwise uniform course of decision during the entire history of our jurisprudence.

Apprendi, 530 U.S. at 489-90 (emphasis added); see also *id.* at 487 ("Almendarez-Torres represents at best an exceptional departure from the historic practice that we have described.") Although this Circuit recognized [**17]the continuing precedential value of Almendarez-Torres in *Pacheco-Zepeda*, 234 F.3d at 413-14, we conclude that, given the "unique facts" of Almendarez-

Torres, its holding regarding prior convictions should remain a "narrow exception" to *Apprendi* that does not extend to nonjury juvenile adjudications.

In sum, we conclude *Apprendi*'s narrow "prior conviction" exception is limited to prior convictions resulting from proceedings that afforded the procedural necessities of a jury trial and proof beyond a reasonable doubt.ⁿ⁵ Thus, the "prior conviction" [**1195] exception does not include nonjury juvenile adjudications. Therefore, the district court violated *Apprendi* when, at sentencing, it increased Tighe's penalty beyond the prescribed statutory maximum based on an adjudication which denied Tighe the right to a jury trial. See *Apprendi*, 530 U.S. at 489; *Jones*, 526 U.S. at 243 n. 6, 249.

ⁿ⁵ We acknowledge the concern that defendants might be prejudiced if their prior juvenile adjudications are presented to the jury, but we note that courts may fashion procedures to avoid putting such defendants to the "Hobson's choice" described by the dissent. The Court in *Spencer v. Texas*, 385 U.S. 554, 566-69, 17 L. Ed. 2d 606, 87 S. Ct. 648 (1967), recognized that states, in implementing their recidivist statutes, could use various procedures to mitigate any prejudice to the defendant. Although the Court declined to require a two-stage jury trial constitutionally, see *id.* at 568, such a separation of the guilt and sentencing phases of the trial would address such potential prejudice.

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Because Tighe properly preserved his *Jones/Apprendi* claim for appeal, his sentence cannot stand unless the district court's constitutional error was harmless beyond a reasonable doubt. *United States v. Velasco-Heredia*, 249 F.3d 963, 968 (9th Cir. 2001); *United States v. Garcia-Guizar*, 234 F.3d 483, 488 (9th Cir. 2000). Because Tighe's sentence of 180 months for his violation of 18 U.S.C. § 922(g)(1) is in excess of the applicable statutory maximum (10 years) based upon the jury's findings, we hold this error is not harmless. *Id.*

We note that Tighe's sentence under Count I, the armed robbery offense, was also improperly affected by the inclusion of his juvenile adjudication as a predicate offense for ACCA. For sentencing purposes, the district court grouped Counts I and II. See U.S.S.G. § 3D1.1(a)(3). The court then determined that Tighe was an armed career offender because he was convicted of being a felon in possession with three prior violent felonies. It applied U.S.S.G. § 4B1.4 (b)(3)(a) and

determined that Tighe's offense level was 31 (34 minus three points for an acceptance-of-responsibility adjustment) [**19] and that given his criminal history category, the sentencing range for Count I was 188-235 months. It sentenced him to the high end of that range, 235 months.

For § 4B1.4 to apply, however, the defendant must be subject "to an enhanced sentence under the provisions of [ACCA,] 18 U.S.C. § 924(e)." U.S.S. G. § 4B1.4 (a). As we conclude above, Tighe could not be subjected to an enhanced sentence under ACCA; thus, he also was not subject to a sentence enhancement under U.S.S.G. § 4B1.4. Without that enhancement, Tighe's offense level would have been 29 and, given his criminal history category, the sentencing range for Count I would have been 151 to 188 months. Accordingly, Tighe's 235-month sentence under Count I was also improperly affected by the Apprendi violation. Cf. *United States v. Saya*, 247 F.3d 929, 942 (9th Cir. 2001) (holding that Apprendi error resulted in a misapplication of the Sentencing Guidelines but that under the applicable plain error standard, no relief would be granted). n6

n6 Given our conclusion that the district court erred in counting Tighe's 1988 juvenile adjudication as a predicate offense under ACCA, we do not reach Tighe's remaining claims of error regarding the use of that adjudication.

[**20]

II. Tighe's Taylor Challenge to his South Dakota Burglary Conviction

Tighe also claims that his 1992 conviction for burglary fails to qualify as a predicate felony under ACCA because South Dakota's definition of burglary is too broad to constitute a "violent felony." We address this issue here because it may arise again on remand if the government attempts [**1196] to resentence Tighe under ACCA. We hold that Tighe's South Dakota conviction can be counted as a predicate felony for ACCA purposes.

Although ACCA includes "burglary" among the enumerated violent felonies, 18 U.S.C. § 924(e)(2)(B)(ii), *Taylor v. United States*, 495 U.S. 575, 109 L. Ed. 2d 607, 110 S. Ct. 2143 (1990), nonetheless established that not all state burglary convictions should be considered predicate felonies under that Act. In deciding whether a prior burglary conviction constitutes a "burglary" for the purposes of ACCA, the sentencing court must determine whether the burglary statute at issue substantially corresponds to the "generic" definition of

burglary. *Id.* at 600; *United States v. Alvarez*, 972 F.2d 1000, 1005 (9th Cir. 1992). [**21] To constitute generic burglary, a burglary statute must contain the following three elements: "[1] an unlawful or unprivileged entry into, or remaining in [2] a building or other structure, [3] with the intent to commit a crime." *Taylor*, 495 U.S. at 598.

Tighe argues that South Dakota's third degree burglary statute, SDCL § 22-32-8, does not contain the necessary elements of generic burglary, because the South Dakota statute omits any reference to the required entry being unlawful or unprivileged. Accordingly, Tighe maintains that his 1992 burglary conviction was nongeneric and cannot constitute a predicate offense under ACCA. In relevant part, SDCL §§ 22-32-8 provides:

Any person who enters an unoccupied structure, with intent to commit any crime other than the act of shoplifting or retail theft ... or remains in an unoccupied structure after forming the intent to commit any crime ... is guilty of third degree burglary.

Given the plain language of the statute, Tighe's assertion is technically correct, as there is no mention of the lawfulness of the entry. Taylor itself recognized that a state might omit this necessary element of generic [**22] burglary: "[a] few States' burglary statutes, however, ... define burglary more broadly, e.g. by eliminating the requirement that the entry be unlawful." 495 U.S. at 599 (emphasis added). It would appear, therefore, that South Dakota's statutory definition of burglary falls outside the generic definition of burglary.

In *State v. Derby*, 462 N.W.2d 512, 513 (S. D. 1990), however, the Supreme Court of South Dakota held that, although not explicitly stated in the statute, "unlawful or unauthorized entry into a structure [is] an element of third-degree burglary." The Derby decision's explicit inclusion of the element of "unlawful or unauthorized entry" brings the burglary statute under which Tighe was convicted squarely with the definition of generic burglary, as each of the three essential elements of generic burglary are actually required to obtain a conviction under the South Dakota Supreme Court's interpretation of South Dakota law. A state court's interpretation of a statute is binding in determining whether the elements of generic burglary are present. *Bonat*, 106 F.3d at 1475. Therefore, given the South Dakota court's interpretation [**23] of the burglary statute, the Taylor definition of generic burglary is satisfied and Tighe's prior South Dakota conviction for burglary was properly counted as a predicate violent felony under ACCA.

III. Remand for Resentencing Because we conclude that the district court erred by counting Tighe's 1988 juvenile adjudication as a predicate offense [*1197] under ACCA, we vacate Tighe's sentence and remand to the district court for resentencing. Tighe argues that at resentencing, the government should be precluded from arguing that his fourth prior conviction, a 1993 conviction for grand theft, qualifies as a predicate offense under ACCA. At his original sentencing, the government urged the district court to count this conviction as a predicate offense under ACCA. The district court, however, sustained Tighe's objection to the conviction "in the interest of judicial economy, "because it had already determined that Tighe had the requisite three countable offenses. Despite sustaining the objection, however, the district court noted that it had not fully analyzed the conviction, which "could well qualify as a violent felony pursuant to 18 U.S.C. § 924(e)(2)."

Nonetheless, [*24] Tighe now argues that because the government failed to file a cross-appeal contesting the district court's grant of Tighe's objection to the use of that conviction as a predicate offense, it has waived any argument that the 1993 conviction qualifies as a predicate offense. We disagree. Failure to cross-appeal a sentencing error does not constitute a waiver of the right to contest that error at resentencing. See *United States v. Garcia-Guizar*, 234 F.3d 483, 490 (9th Cir. 2000) ("We reject [the defendant's] claim that the government waived its right to correct the error in the original sentence because it did not cross-appeal from the original sentence."). At resentencing, a district court is "free to review the entire sentencing calculus." *United States v. Caterino*, 29 F.3d 1390, 1394 (9th Cir. 1994), overruled on other grounds, *Witte v. United States*, 515 U.S. 389, 132 L. Ed. 2d 351, 115 S. Ct. 2199 (1995). Thus, at Tighe's resentencing, the district court is free to consider whether Tighe's 1993 conviction for grand theft qualifies as a predicate offense under ACCA.

Finally, Tighe argues that if the district court is permitted[*25] to consider his 1993 grand theft conviction at resentencing, the government should be precluded from offering any additional evidence regarding that conviction. In support of this contention, Tighe relies on *United States v. Matthews*, 226 F.3d 1075 (9th Cir. 2000). Matthews involved completely different facts. n7 There, the government patently failed to comply with evidentiary requirements at sentencing and wanted to re-open the record on remand to correct its error. Here, the government complied with its evidentiary burden during sentencing. Allowing the government to submit evidence at Tighe's resentencing hearing will therefore not constitute an impermissible "second bite at the apple" for the government. Accordingly, at Tighe's

resentencing, the government may offer Tighe's 1993 grand theft conviction for consideration as a predicate offense under ACCA, and may, if necessary, submit additional documentation regarding that conviction.

n7 Matthews has been taken en banc and can no longer be cited as precedent. See *United States v. Matthews*, 254 F.3d 825 (9th Cir. 2001). If this case were not distinguishable from Matthews, we would delay our decision until that case was decided.

[**26]

CONCLUSION

We conclude that ACCA's use of prior convictions as sentencing factors is proper under *Almendarez-Torres*. We also conclude that Tighe's 1992 South Dakota third degree burglary conviction was a generic burglary conviction that properly served as a predicate offense under ACCA. We hold, however, that the use of Tighe's 1988 nonjury juvenile delinquency adjudication to increase his maximum statutory penalty violated *Apprendi*. Accordingly, we vacate [*1198] his sentence and remand for resentencing.

VACATED AND REMANDED.

DISSENTBY: Melvin Brunetti

DISSENT:

BRUNETTI, Circuit Judge, dissenting:

The majority reaches the unsupportable conclusion that a juvenile adjudication is not a "conviction" for sentencing enhancement purposes because, in essence, juveniles have no constitutional right to a trial by jury. I respectfully dissent from Part I.B of the opinion because it fails to recognize the full force of Supreme Court precedent, our case law, and congressional intent. I begin with 18 U.S.C. § 922(g)(1), the relevant statute under which Tighe was convicted. That provision makes it unlawful for a prior felon to possess a firearm. When an individual[*27] violates the substantive crime set forth in section 922(g), he is subject to an enhanced penalty under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), if he has suffered three previous convictions for "a violent felony or a serious drug offense." Congress specifically included in section 924(e)'s definition of a countable conviction any "finding that a person has committed an act of juvenile delinquency involving a violent felony." *Id.* § 924(e)(2)(C).

This court has clearly held that section 924(e) is a penalty enhancement statute and does not create a new substantive federal crime. *United States v. Dunn*, 946 F.2d 615, 619 (9th Cir. 1991) (citing *United States v. West*, 826 F.2d 909, 911 (9th Cir. 1987)); see also *Taylor v. United States*, 495 U.S. 575, 109 L. Ed. 2d 607, 110 S. Ct. 2143 (1990) (referring repeatedly to § 924(e) as a "sentence enhancement provision"). We have further held that the fact of the predicate felony convictions required for a sentencing enhancement under section 924(e) need not be included in the indictment nor proved at trial. *Id.* The judge may find the fact off[**28] the requisite predicate convictions at the sentencing hearing under a preponderance-of-the-evidence standard. *United States v. Phillips*, 149 F.3d 1026, 1033 (9th Cir. 1998).

With this backdrop in mind, I turn to the facts of this case relevant to my concern. The district court determined at sentencing that Shannon Wayne Tighe had been convicted of at least three prior violent felonies, requiring an ACCA enhancement. One of these prior convictions is a 1988 Oregon juvenile adjudication for reckless endangerment, first-degree robbery, and unauthorized use of a motor vehicle. Over Tighe's constitutional objections, the district court included the Oregon juvenile adjudication as a countable felony under section 924(e) by relying, in great part, on our decision in *United States v. Williams*, 891 F.2d 212 (9th Cir. 1985).

In *Williams*, the defendant contended that his due process rights were violated because his adult criminal sentence was enhanced due to prior juvenile adjudications for which he did not have a right to jury trial. *Id.* at 213. Relying on *McKeiver v. Pennsylvania*, 403 U.S. 528, 29 L. Ed. 2d 647, 91 S. Ct. 1976 (1971), [**29] in which the Supreme Court held that jury trials are not constitutionally required for juvenile adjudications, we allowed the juvenile conviction to support the sentence enhancement. We observed that while "juvenile delinquency proceedings must conform to the due process guarantees of the Constitution ... these due process guarantees do not include the right to a jury trial for delinquency adjudications." *Williams*, 891 F.2d at 214 (citations omitted). Thus, where a juvenile received all the process constitutionally due at the delinquency proceeding stage, we found the later use of the juvenile adjudication for an adult enhancement to be constitutionally sound because "the conviction was constitutionally valid for purposes of imposing a [*1199] sentence of imprisonment for the [juvenile] offense itself." *Id.* at 215. To hold otherwise would have required the court "to hold that the enhancement of an adult criminal sentence requires a higher level of due process

protection than the imposition of a juvenile sentence"--a notion the court squarely rejected. *Id.*

Tighe's case should be straightforward under *Williams* because, as explained above, there is [**30] no constitutional problem with using a juvenile delinquency adjudication to support a sentencing enhancement. But the majority suggests that the Supreme Court's decisions in *Almendarez-Torres*, *Jones*, and *Apprendi* direct a different result than the one *Williams* demands. I disagree.

Jones v. United States, 526 U.S. 227, 143 L. Ed. 2d 311, 119 S. Ct. 1215 (1999) was a precursor to the Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), which held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490; see also *Jones*, 526 U.S. at 243 n. 6. The "other than a fact of a prior conviction" language in *Apprendi* hearkens back to the Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 140 L. Ed. 2d 350, 118 S. Ct. 1219 (1998).

Almendarez-Torres held that where a legislature crafts a penalty provision which simply authorizes a court to increase a [**31] sentence for a recidivist, the Constitution does not require the government to charge the fact of the prior conviction in the indictment. *Id.* at 226-227. There, the Court examined whether a provision in an illegal re-entry statute, which raised the penalty for illegal re-entry from two to twenty (20) years based on recidivism, was a sentencing factor or an element of the crime. In concluding that it was a sentencing factor, the Court rejected the argument that, because the fact of recidivism increased the maximum penalty to which a defendant was exposed, Congress was constitutionally required to treat recidivism as an element of the crime that must be charged in an indictment and proved beyond a reasonable doubt. *Id.* at 239; see also *United States v. Pacheco-Zepeda*, 234 F.3d 411, 413-14 (9th Cir. 2001) (explaining that *Almendarez-Torres* "stands for the proposition that not every fact expanding a penalty range must be stated in a felony indictment, the precise holding being that recidivism increasing the maximum penalty need not be so charged.") (citation and internal quotations omitted). In *United States v. Pacheco-Zepeda*, [**32] we had occasion to address whether *Almendarez-Torres* remained good law after the Court in *Apprendi* expressed some concern over its continuing validity. *Pacheco-Zepeda*, 234 F.3d at 414. We observed that *Apprendi*

reasoned that any due process or Sixth Amendment concerns--arising out of the judicial determination of a "fact" that increased punishment beyond the statutory maximum--were mitigated in *Almendarez-Torres* by "both the certainty that procedural safeguards attached to any 'fact' of prior conviction, and the reality that [the defendant] did not challenge the accuracy of that 'fact' in his case.

Id.

Thus, we found that "the Court in *Apprendi* chose not to overrule *Almendarez-Torres*, and unmistakably carved out an exception for "prior convictions" that specifically preserved the holding of *Almendarez-Torres*. *Id.* (emphasis added). The majority acknowledges, as it must, that *Almendarez-Torres* is still part of [*1200] "the current state of the law." However, it proceeds to make the tortured argument that prior juvenile adjudications, which do not afford the right to a jury trial, do not fall within the "prior conviction"[*33] exception to *Apprendi*'s general rule that a fact used to increase a defendant's maximum penalty must be submitted to a jury and proved beyond a reasonable doubt. The majority does so by relying on language in *Jones* (and later reiterated in *Apprendi*) that explains why it is constitutionally permissible to use prior convictions to increase the possible penalty for an offense without treating the fact of the convictions themselves as elements of the crime. I repeat the specific *Jones* language here:

One basis for that constitutional distinctiveness [of prior convictions] is not hard to see: unlike virtually any other consideration used to enlarge the possible penalty for an offense ... a prior conviction must itself have been established through procedures satisfying the fair notice, reasonable doubt and jury trial guarantees."

Majority Opinion at 13595 (quoting *Jones*, 526 U.S. at 249.)

The majority takes this language and makes the quantum leap to hold, in effect, that in order for a prior conviction to support a sentencing enhancement, it must have been "subject to the fundamental triumvirate of procedural protections intended to guarantee[*34] the reliability of criminal convictions: fair notice, reasonable doubt and the right to a jury trial." Majority Opinion at 13595. Because part of this so-called "fundamental triumvirate of procedural protections" is absent for juvenile adjudications, the majority takes juvenile adjudications out of the equation, even though Congress specifically made them part of it.

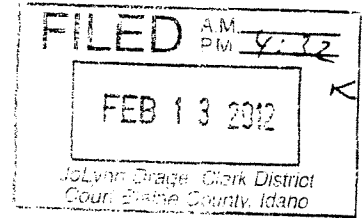
I do not believe the language plucked from *Jones* provides sufficient authority to overrule (albeit implicitly) this court's decision in *Williams*, nor do I think the majority's attempt to distinguish *Williams* is valid. In my view, the language in *Jones* stands for the basic proposition that Congress has the constitutional power to treat prior convictions as sentencing factors subject to a lesser standard of proof because the defendant presumably received all the process that was due when he was convicted of the predicate crime. For adults, this would indeed include the right to a jury trial. For juveniles, it does not. Extending *Jones*' logic to juvenile adjudications, when a juvenile receives all the process constitutionally due at the juvenile stage, there is no constitutional problem (on which[*35] *Apprendi* focused) in using that adjudication to support a later sentencing enhancement. Our decision in *Williams* recognizes just that.

The majority does not make clear how its decision today will work in practice, but it is obvious that it will be troublesome. If a juvenile adjudication (without the right to a jury trial) does not fall within the *Almendarez-Torres* exception, then, to comply with *Apprendi*, prosecutors will be required to prove the fact of the prior convictions to the jury in order to support the sentencing enhancement. While, as the majority notes, some states treat prior convictions as elements of the related crime and submit the fact of a prior conviction to a jury, it overlooks the fact that the Supreme Court has long recognized "that the introduction of evidence of a defendant's prior crimes risks significant prejudice." *Almendarez-Torres*, 523 U.S. at 235 (citing *Spencer v. Texas*, 385 U.S. 554, 560, 17 L. Ed. 2d 606, 87 S. Ct. 648 (1967)); see also *United States v. Dunn*, 946 F.2d 615, 619-620 (9th Cir. 1996) (commenting that including information regarding three prior violent felonies in the[*36] defendant's indictment "probably would have introduced an unacceptable level of prejudice into his trial"). Thus, a [*1201] defendant with a prior juvenile adjudication will be put to the Hobson's choice of stipulating to the priors or parading them before a jury. But, as *Almendarez-Torres* recognized, "even if a defendant's stipulation were to keep the name and details of the previous offense from the jury, ... jurors would still learn, from the indictment, the judge, or the prosecutor, that the defendant had committed [three violent felonies]." 523 U.S. at 235 (citation omitted). This approach seems to wreak havoc on the very due process rights *Apprendi* sought to vindicate.

For these reasons, I respectfully dissent from Part I.B and the ultimate result, but concur in all other respects.

ORIGINAL

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ

Defendant.

Case No. CR-11-2386

STATE'S MEMORANDUM IN SUPPORT
OF MOTION IN LIMINE

Plaintiff, State of Idaho hereby submits this memorandum of authority in support of the Motion in Limine.

FACTS AND PROCEDURAL HISTORY

On September 14th, 2011, a preliminary hearing was held in this case in front of the Honorable R. Ted Israel in Magistrate Court. During that hearing, the State presented evidence showing that the Defendant was previously convicted of driving under the influence pursuant to Nevada Revised Statute 484.379, attached hereto as Exhibit A. This evidence consisted of a certified judgment of conviction dated July 11th, 2011 out of Lyon County, Nevada, attached hereto as Exhibit B.

Evidence was also provided that the Defendant had been previously convicted of Driving Under the Influence pursuant to California Vehicle Code § 23152, this evidence consisted of a certified judgment of conviction dated September 17th, 2007, out of Placer County, California, attached hereto as Exhibit C.

At the preliminary hearing, Judge Israel found probable cause for Driving Under the Influence, 3rd Offense in 10 years, a Felony, and ordered the Defendant bound over to the

STATE'S MEMORANDUM IN SUPPORT OF MOTION IN LIMINE - 1

District Court. The State then filed a Motion in Limine to have this Court rule that the California and Nevada Judgment of Convictions are substantially conforming to Idaho's DUI statute as included in I.C. § 18-8005(6), 18-8005(10). The Court heard preliminary arguments on the issues and allowed the parties the opportunity to submit briefs. While the Motion in Limine requested the Court rule that both the California and Nevada DUI statutes are substantially conforming criminal violations, the Defendant's Memorandum is focused solely on Nevada's DUI Statute. Whether or not the Defendant is conceding that the California DUI statute is substantially conforming, this brief shall address and respond to the Defendant's arguments.

ARGUMENT

1. The Nevada conviction for Driving Under the Influence is Substantially Conforming criminal violation under I.C. § 18-8005(10).

Under Idaho Code, § 18-8005(10), a substantially conforming foreign criminal violation exists when a person had pled guilty to or found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section I.C. § 18-8004. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the Court.

The Statute under which the Defendant was convicted in Nevada (N.R.S. 484.379) (see exhibit A) substantially conforms to I.C. § 18-8004. Nevada's applicable statute states in applicable part:

- "1. It is unlawful for any person who:
- (a) Is under the influence of intoxicating liquor;
 - (b) Has a concentration of alcohol or .08 or more in his blood or breath; or
 - (c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of .08 or more in his blood or breath,

To drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access."

N.R.S. 484.379.

Idaho Code § 18-8004(1)(a) reads:

"It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public."

Defendant first argues that the Nevada statute is not substantially conforming because "Idaho law requires the intoxication to be at the time of driving while the Nevada statute is not concerned with the concentration at the time of driving only the concentration at the time of the test." Defendant's Memorandum p.2. The Defendant incorrectly reads the Nevada Statute. N.R.S. 484.379 clearly prohibits driving while intoxicated by including the statutory language prohibiting "...any person who... is under the influence of intoxicating liquor *or has a concentration of alcohol of .08 or more in his blood or breath* to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The Defendant's argument relies solely on subsection 484.379(1)(c) and ignores 1(a) and 1(b). A plain reading of the statute provides that N.R.S. 484.379(1) has an "or" after (b) that applies to (a),(b), and (c). Therefore, The Defendant is incorrect in stating the Nevada Statute is not concerned with the alcohol concentration at the time of driving.

Defendant also claims that there is a significant difference between Idaho and Nevada because Idaho's statutory scheme allows for a defendant to introduce evidence that his blood alcohol reading was less than when he was driving and this same evidence would be prohibited in Nevada. The Defendant ignores N.R.S. 484.379(4). Importantly, N.R.S. 484.379(4) provides that "if consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1, that the defendant consumed sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood or breath was tested, to cause him to have a concentration of alcohol of .08 or more in his blood or breath." The statute then provides the Defendant must provide notice to the State for this defense. Basically, it is a defense in Idaho and Nevada where the Defendant claims he was not intoxicated *while* driving. Nevada merely created an affirmative defense and required notice. This is not a substantial deviation from Idaho's statute.

Idaho case law supports the argument that the Nevada statute is a substantially conforming foreign conviction despite the provision allowing for testing within 2 hours of driving. The Idaho Court of Appeals first analyzed substantial conformity in *State v. Schmoll*, 144 Idaho 800, 172 P.3d 555 (Ct. App. 2007). In that case, the Court was comparing Montana's DUI statute to

Idaho's and set out some basic guidelines. First, exact correspondence is not required. *Id.* at 559. Next, the Court compares the elements of the statutes. *Id.* at 558-59. Finally, it is important for the Court to decide whether both statutes prohibit the same essential conduct – driving while under the influence of alcohol. *Id.*

The Defendant in *State v. Schmoll* made a similar argument under the Montana DUI statute as the Defendant in the present case. In *Schmoll*, the Montana statute at issue provided “If BAC tests are preformed within a reasonable time after the alleged violation, the results of the tests give rise to several inferences... If the test reveals a concentration of .08 or more, there is a rebuttable inference that the person was in fact under the influence of alcohol when driving.” *Schmoll*, 172 P.3d at 559., M.C.A. §61-8-401(4)(c). The Court ruled that the difference between Montana and Idaho in using BAC was inconsequential, reasoning “[p]roving that a person is under the influence absent a BAC test requires a greater degree of impairment in Montana than in Idaho...” *Id.* Finally, because the “two statutes frame their prohibitions using the same language, requiring substantially conforming elements to be met to sustain a violation.” *Schmoll* at 559.

The Idaho Court of Appeals also considered the substantially conforming prior out of state DUI statutes in *State v. Moore*, 148 Idaho 887, 231 P.3d 532 (Ct. App. 2010). In that case the Court considered whether North Dakota statute is substantially conforming to Idaho. The North Dakota statute had a provision similar to Nevada's and stated “that person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within 2 hours after the driving or being in actual physical control of a vehicle.” *State v. Moore* 231 P.3d at 541. The Defendant did not challenge this issue and the Court did not rule on it, but the Court reiterated the same issues in *Schmoll* and ruled that North Dakota's DUI statute was substantially conforming to Idaho Code § 18-8004.

As in *Schmoll*, since Nevada uses the BAC evidence differently, this Court should compare the statutes respective definitions of “under the influence.” In Idaho, under the influence has been defined to include “impairment of driving ability to the slightest degree; the impairment must be noticeable or perceptible, but does not need to rise to a level where the defendant is incapable of driving safely or prudently.” *Schmoll*, 172 P.3d at 559. Nevada defines under the Influence in 484.379(2)(c) as “to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle.” Therefore, Nevada has a higher standard that surpasses the elements required for a violation in Idaho. See *Schmoll* at 559. The elements of the Nevada and Idaho statutes are substantially conforming under Idaho Code § 18-8004.

2. The Nevada conviction for Driving Under the Influence is constitutionally valid and can be used by the State to enhance the Defendant's current Driving Under the Influence charge.

The Defendant next claims that because Nevada does not allow for a jury trial for a first offense DUI, a prior conviction cannot be used as a substantially conforming prior conviction. The Defendant cites *United States of America v. Shannonwayne Tighe* 266 F.3d 1187, (9th Circuit 2001) as authority for his argument.

The Supreme Court of the United States has upheld Nevada's refusal to provide jury trials for misdemeanor DUIs as Constitutional. See *Blanton v. City of North Las Vegas, Nevada*, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989). In *Blanton*, the Court stated that a person charged under Nevada law with a DUI does not have a right to a trial by jury because it is a "petty crime" which is not subject to the Sixth Amendment jury trial provision. See *Id.* at 538, 1290. The Court concluded that the Nevada DUI statute is a petty crime because it carries a maximum prison term of six months or less and the additional statutory penalties are not so severe that they clearly reflect a legislative determination that the offense is a "serious" one. *Id.* This reasoning conforms to previous Supreme Court decisions which hold that petty crimes are not subject to the Sixth Amendment jury trial provision, while "serious" crimes are subject to that provision. See *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.3d.2d 490 (1968), *Frank v. United States*, 395 U.S. 147, 89 S.Ct. 1503, 23 L.3d.2d 162 (1969), *Baldwin v. New York*, 399 U.S. 66, 90 S.Ct. 1886, 26 L.3d.2d 437 (1970). Therefore, the refusal of Nevada to provide a jury trial for defendants charged with misdemeanor DUI does not violate that defendant's constitutional rights.

The United States District Court for the District of Nevada has addressed the issue of whether prior nonjury DUI convictions can be used to enhance a felony DUI sentence. In *Westmoreland v. Demosthenes*, the U.S. District Court held that a defendant's due process rights are not violated when a prior non-jury DUI conviction is used to enhance a sentence for felony DUI. See 737 F.Supp. 1127 (D.Nev. 1990).

The Defendant relies on *United States of America v. Shannonwayne Tighe*. That case discusses the use of a prior juvenile conviction as a sentencing enhancement because he had no right to a jury trial for juvenile offenses. While the *Tighe* Court ruled that a juvenile conviction without the right to a jury trial may not be used as a sentencing enhancement, most federal appellate courts disagree with the Ninth Circuit and have rejected the reasoning of the *Tighe*

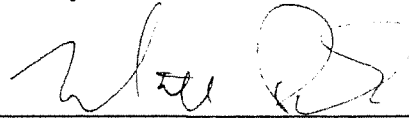
majority. *United States v. Smalley* (8th Cir.2002) 294 F.3d 1030, 1032; *United States v. Jones* (3rd Cir.2003) 332 F.3d 688, 696; *United States v. Burge* (11th Cir.2005) 407 F.3d 1183, 1190.

While this issue is apparently an issue of first impression in Idaho, this Court should rule that the Nevada conviction is constitutional pursuant to the holdings in *Blanton* and *Westmoreland* because these cases address the precise issue before the court.

CONCLUSION

In conclusion, the Defendant's prior conviction in Nevada was constitutional and valid under Nevada law. Furthermore, Nevada's refusal to provide for a jury trial on misdemeanor DUI's has been upheld by the Supreme Court of the United States. The Federal District Court has also upheld the use of those non-jury convictions for enhancement purposes on a felony DUI. Nothing in Idaho law provides that the use of such a conviction is not permissible for the purpose of enhancing a DUI to a felony. Furthermore, the Nevada statute under which the Defendant was convicted is a substantially conforming foreign criminal statute. Therefore, the defendant's prior conviction from Nevada is constitutionally and statutorily valid, and can be used to enhance his current DUI to a felony. The State's Motion in Limine should be granted.

DATED this 13 day of February, 2012.



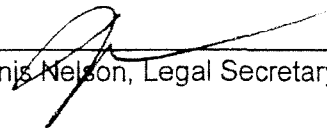
Matthew Fredback, ISBN 7262
Blaine County Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2012, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Dan Dolan, Esq.
Attorney at Law
PO Box 757
Ketchum, Idaho 83340

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy



Janis Nelson, Legal Secretary

Westlaw.

Page 1

N.R.S. 484.379

West's Nevada Revised Statutes Annotated Currentness

Title 43. Public Safety; Vehicles; Watercraft

Chapter 484. Traffic Laws (Refs & Annos)

Rules of the Road

Driving Under the Influence of Intoxicating Liquor or Controlled or Prohibited Substance

484.379. Unlawful acts; affirmative defense; additional penalty for violation committed in work zone

<Text of section expires by limitation on the date of the repeal of the federal law requiring each state to make it unlawful for a person to operate a motor vehicle with a blood alcohol concentration of 0.08 percent or greater as a condition to receiving federal funding for the construction of highways in this State. See, also, section effective on the date of the repeal of the federal law requiring each state to make it unlawful for a person to operate a motor vehicle with a blood alcohol concentration of 0.08 percent or greater as a condition to receiving federal funding for the construction of highways in this State.>

1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor;

(b) Has a concentration of alcohol of 0.08 or more in his blood or breath; or

(c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his blood or breath,

to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

2. It is unlawful for any person who:

(a) Is under the influence of a controlled substance;

(b) Is under the combined influence of intoxicating liquor and a controlled substance; or

(c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle,

to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this State is not a defense against any charge of violating this subsection.

3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
----------------------	-----------------------------------	-----------------------------------

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EXHIBIT

A

3

(a)	Amphetamine	500	100	
(b)	Cocaine	150	50	
(c)	Cocaine metabolite	150	50	
(d)	Heroin	2,000	50	
(e)	Heroin metabolite:			
	(1)	Morphine	2,000	50
(2)	6-monoacetyl morphine	10	10	
(f)	Lysergic acid diethyl- amide	25	10	
(g)	Marijuana	10	2	
(h)	Marijuana metabolite	15	5	
(i)	Methamphetamine	500	100	
(j)	Phencyclidine	25	10	

4. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood or breath was tested, to cause him to have a concentration of alcohol of 0.08 or more in his blood or breath. A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

5. A person who violates any provision of this section may be subject to the additional penalty set forth in NRS 484.3667 .

CREDIT(S)

Added by Laws 1969, p. 1485. Amended by Laws 1971, p. 2030; Laws 1973, pp. 587, 1277, 1501; Laws 1975, p. 788; Laws 1981, p. 1924; Laws 1983, p. 1068; Laws 1993, p. 539; Laws 1999, pp. 2451, 3415; Laws 2001, c. 10, § 98, eff. April 2, 2001; Laws 2003, c. 421, § 6, eff. Sep. 23, 2003.

NOTES OF DECISIONS

In general 2
 Actual physical control of vehicle 8
 Arguments and conduct of counsel 15
 Arrest, stop or inquiry 9
 Blood tests 11
 Burden of proof 5
 Contributory negligence 16
 Double jeopardy 4
 Due process 3
 Enhancement of offense 17
 Instructions 14

FILED
DAYTON TOWNSHIP
JUSTICE COURT

CASE NO. 07 CR 00294 3G

2007 JUL 11 AM 10:25

NEKIA A. DYAN
LYON COUNTY CLERK
DEPUTY *D. J. JONES*

IN THE JUSTICE COURT OF DAYTON TOWNSHIP
IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA

THE STATE OF NEVADA,
COUNTY OF LYON,
Plaintiff,

vs.

JUDGMENT OF CONVICTION
AND ORDER OF THE COURT

JUAN LEON JUAREZ,
Defendant. /

The Defendant above-named, having appeared before the Court this July 11, 2007, pursuant to plea negotiations, and having entered a plea of Guilty on 07/11/2007 to the charge(s) of DUI FIRST OFFENSE NRS 484.3792.1A, a misdemeanor committed on 05/23/2007 the Defendant was canvassed on plea.

Represented by KENNETH WARD. The Deputy District Attorney ROBERT BRYANT was present representing Lyon County.

Good cause appearing, **IT IS ORDERED** that the Defendant's plea be accepted into the minutes of the court. The defendant is hereby adjudged guilty of:

COUNT I: A violation of **NRS 484.3792.1A DUI FIRST OFFENSE**, a misdemeanor.

SENTENCE - COUNT I

\$ 500.00 FINE

\$ 115.00 Administrative Assessment

\$10.00 Court Facility Fee

\$7.00 Specialty Court Fee

DEFENDANT GIVEN CREDIT FOR \$300.00 FOR 4 DAYS TIME SERVED IN JAIL.

EXHIBIT

B

00007-99-

1
2 Defendant ordered to reimburse this court \$ 250.00 for the services of the Public
3 Defender.

4 Defendant ordered to pay \$ 60.00 Chemical Analysis Test.

5
6 Said Fine(s), administrative assessment(s), and additional fees imposed total the sum of
7 \$ 642.00 **AN ADDITIONAL \$25.00 FEE** is assessed for payment arrangements
8 making new balance \$ 667.00. Payments set at \$ 115.00 monthly beginning
9 08/11/07. If full payment in the amount of \$ 642.00 is received by 07/21/07
10 the \$25.00 fee will be waived.

11 Defendant is sentenced to 30 day(s) Lyon County Jail/suspended all but 2 days
12 for 2 YEARS.

13 Defendant given credit for time served and does not have to report to jail.

14
15 **CONDITION OF SUSPENSION - COUNT I**

16 If defendant fails to comply with any of the below orders the suspended sentenced will
17 be imposed.

18 Defendant ordered to attend and pay for a DUI Workshop and complete by 09/11/07

19 Defendant ordered to attend and pay for a Victim Impact Panel by 09/11/07.

20 No further related problems.

21
22 IT IS FURTHER ORDERED that the defendant appear alcohol/drug free to all assigned
23 programs and county jail.

24 This order signed on Wednesday, July 11, 2007

25 
26 WILLIAM G. ROGERS
27 Justice of the Peace

28 ///

I hereby understand the above conditions of my sentence. I understand that if I am unable to pay my fines or comply with any other COURT ORDER I must appear in court on the last Thursday of the month prior to the due date at 3:00 pm. to request an extension. I understand that a \$10.00 late charge will be added anytime my payment becomes DELINQUENT. Failure to comply with any COURT ORDER will result in the issuance of a BENCH WARRANT for my immediate arrest.

Juan Leon.
Defendant's signature

Street Address Pine St tahoma 6618

City tahoe city State CA Zip 96145 ✓

Mailing Address P.O Box 896

City _____ State _____ Zip _____

Phone (530) 525 4038

Payments may be mailed to DAYTON JUSTICE COURT 235 Main Street, Dayton NV 89403, Please make checks payable to DAYTON JUSTICE COURT and indicate the case number and/or defendants name to ensure proper credit. PAYMENTS MAY BE MADE WITHIN MONDAY – FRIDAY BETWEEN THE HOURS OF 8:00 – 4:30. A drop box is available for after hour payments. DO NOT PLACE CASH WITHIN THE DROP BOX.

If for any reason you are unable to comply with any of the above orders **by the required date** you must appear **IN PERSON** prior to the due date to request an extension from the judge at 3:00 PM on one of the dates below.

Extension Hearing Schedule 2007

JANUARY 25, 2007	FEBRUARY 22, 2007	MARCH 29, 2007	APRIL 26, 2007
MAY 31, 2007	JUNE 28, 2007	JULY 26, 2007	AUGUST 30, 2007
SEPTEMBER 27, 2007	OCTOBER 25, 2007	NOVEMBER 29, 2007	DECEMBER 27, 2007

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 8.5.11

Justice of the Peace of Dayton Township
Justice Court of the State of Nevada, in and for
Lyon County.

BY: [Signature]
Court Clerk

00004-101

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

18
People vs. Juan Leon Juarez Case No.: 72-4624
Date: 9-17-07 Court met at: 1:30p Dept.: 14 Judge: BAHRKE
Clerk: DAVIES Reporter: LAMPMAN Probation:
Defense Counsel: PD JONES FITZPATRICK D.D.A.: CATTRAN DOYLE
Nature of Proceedings:
Custody Status: PTA Interpreter: ESC ☒ certified ☐ qualified Language: Spanish ☐ oath on file

NEXT COURT APPEARANCE:

D-14

Time Estimate

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Defendant present <input type="checkbox"/> not present. | <input type="checkbox"/> Ordered booked/released | <input type="checkbox"/> Probation summarily revoked |
| <input type="checkbox"/> Arrn waived <input type="checkbox"/> Arrn completed <input type="checkbox"/> Viol of Prob | <input type="checkbox"/> Advised pymt of booking/ incarceration fees | <input type="checkbox"/> Probation reinstated |
| Appt. <input type="checkbox"/> Public Defender | <input type="checkbox"/> Advised financial resp. | <input type="checkbox"/> B/W ordered. Bail \$ <input type="checkbox"/> NCIC |
| <input type="checkbox"/> Conflict Firm | <input type="checkbox"/> RPO waived | <input type="checkbox"/> Arrest warrant ordered. |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied | <input type="checkbox"/> Re-test ordered | <input type="checkbox"/> B/W stayed / held |
| <input type="checkbox"/> Guilty <input checked="" type="checkbox"/> Nolo Contendere | <input type="checkbox"/> Arbuckle waiver | <input type="checkbox"/> B/W recalled set aside |
| <input type="checkbox"/> Admitted <input type="checkbox"/> Advised | <input type="checkbox"/> Appeal waiver | <input type="checkbox"/> Bail Forfeited <input type="checkbox"/> Exonerated |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> Time not waived | <input type="checkbox"/> Stipulate to ProTem | <input type="checkbox"/> O/R revoked |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general | <input type="checkbox"/> Drop | <input type="checkbox"/> Reinstated upon payment of reinstatement fee |
| Time waived for sentencing <input type="checkbox"/> | <input type="checkbox"/> CLETS filed and served | <input type="checkbox"/> Bail apply / balance exonerated |
| <input type="checkbox"/> Dismissed <u>DA</u> | <input type="checkbox"/> Amended CLETS filed and served | <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> Amended | Proof <input type="checkbox"/> shown <input type="checkbox"/> not shown | Defendant ordered to report to the: |
| <input checked="" type="checkbox"/> Boykin/Tahl rights waived. Oral / written | | <input type="checkbox"/> Criminal Division <input type="checkbox"/> Judicial Assist. |
| <u>(initial)</u> Jury trial / Contested hearing | | <input type="checkbox"/> Public Defender |
| <u>(initial)</u> Confrontation & examination. | | <input type="checkbox"/> Revenue Services |
| <u>(initial)</u> Right to remain silent. | | <input checked="" type="checkbox"/> Probation Department |
| <input type="checkbox"/> Attend self help meetings per week until further order of the court | | <input type="checkbox"/> forthwith <input type="checkbox"/> on <u>48 HRS</u> |
| | | <input checked="" type="checkbox"/> BAC <u>16/16</u> |

☐ Preliminary examination waived, defendant held to answer. ☐ Court deemed Complaint to be Information.

Evaluation: ☐ EC730 ☐ EC1017 ☐ Full ☐ Consultation ☐ General ☐ PC1368 ☐ PC1026 ☐ PC288.1 ☐ WI3051
Requested by: ☐ Court ☐ DA ☐ Defense, with Dr. _____

☐ Request for new jail turn in date ☐ granted ☐ denied. New jail turn in date _____ Previous jail turn in date _____
Transcript request date _____ reporter _____ requested by ☐ Court ☐ Defense Counsel ☐ District Attorney

Offer: _____

Indication: _____

Plea: 23152(b) VC

☐ REMANDED to custody of Sheriff ☐ until next appearance. Bail \$ _____ ☐ to be delivered to CDC / CRC per sentence.

☐ ORDERED RELEASED O / R

☐ DISCHARGED (present case only)

☐ COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____

PROMISE TO APPEAR: I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature _____

Address _____

Defendant jail Revenue Services Probation DA Defense Counsel

shared/print shop forms/Criminal/Arraignment Ppt. Minutes

Revised 2/07

000-102

People vs.

Juarez

IT IS HEREBY ORDERED that the imposition of sentence be suspended and the following judgment is imposed.

CASE NO.	CONDITIONAL SENTENCE (number of years)	FORMAL PROBATION (number of years)	PROBATION REINSTATED	JAIL SENTENCE	CREDIT FOR TIME SERVED	C/S	C/C
<u>72-4624</u>	<u>3</u>		<input type="checkbox"/> yes <input type="checkbox"/> no	<u>5</u>	<u>(2 + 0) 2</u>		
			<input type="checkbox"/> yes <input type="checkbox"/> no		<u>(+)</u>		
			<input type="checkbox"/> yes <input type="checkbox"/> no		<u>(+)</u>		
			<input type="checkbox"/> yes <input type="checkbox"/> no		<u>(+)</u>		
			<input type="checkbox"/> yes <input type="checkbox"/> no		<u>(+)</u>		

Defendant must complete ☐ actual days and ☐ conduct credits included in custody. ☐ Defendant may apply for alternative sentencing on remaining balance from in custody. ☐ Defendant may be released to residential treatment from in custody to complete balance of sentence. ☐ Defendant may be released to residential program if bed is available prior to sentence being satisfied.

SAID SENTENCE IS TO COMMENCE ☐ forthwith ☒ on 11-30-07 at 10:00 a.m. when the defendant shall report to the Placer County Jail at 2775 Richardson Drive in Auburn, California. ☐ See reverse side of this form for additional terms and conditions.

☐ Defendant is not eligible for alternative sentencing ☐ No electronic monitoring ☐ Other _____
☐ _____ hours community service ☐ in lieu of fine ☐ for fine conversion ☐ vacated & converted back to fine amount listed below.
☐ License is ☐ suspended ☐ revoked ☐ restricted for period of _____ days ☐ months ☐ years.
 Restriction includes ☐ to/from work ☐ during the scope of work ☐ to/from program ☐ to/from school ☐ Other restrictions _____
☐ Interlock Device must be utilized for a period of _____ years on any vehicle owned/operated. ☐ 2 self-helps per week for 6 months in lieu of IID
☐ Designated as Habitual Traffic Offender.
☒ Within 21 days enroll into ☐ 12 hour Alcohol Educ. ☒ 3 month 1st Offender Prog. ☐ 6 month 1st Offender Prog. ☐ 9 month 1st Offender Program
☐ 18 month Alcohol Prog.
☐ Mandatory Jail Sanction for ☐ Track 3 ☐ Proposition 36
☐ Attend DUI Panel within 60 days ☐ Clerk's office is authorized to restrict California Driver's License with proof of insurance and employment/school.
☐ Not own or have in possession or control, any deadly weapon or firearm ☐ Register pursuant to _____ ☐ Forfeit weapon(s). _____
☐ Submit person/vehicle/residence to search/seizure at any time without benefit of warrant as directed by any Peace Officer.
☐ Testing ☐ Re-Test _____ ☐ PC295DNA Samples ☐ Register pursuant to _____
☐ No contact ☐ peaceable contact with _____
☒ Abstain from use or possession of intoxicants ☐ not frequent places where alcohol is the chief item for sale. ☐ Submit to alcohol testing as directed.
☐ Participate in and complete: ☐ Batterers 52 week prog. ☐ 52 week parenting program ☐ Anger Control I ☐ Anger Control II ☐ Drug Awareness
☐ Theft I ☐ Theft II ☐ HIV Educ. ☐ Choices, Challenges, & Changes ☐ Self Help(s) per week for _____ wks ☐ Until Further Order
☐ Not change residence or leave the State of California without prior approval. ☐ Report to court as directed. ☐ Report to probation as ordered.
☒ Report any change of address to the court.
☒ Other orders: No alcohol during Alt. Sent.

Probation is ☐ modified ☐ revoked ☐ terminated.

Probation will terminate upon completion of jail sentence in case number(s) _____

MODIFICATION OF TURN IN DATE

Original turn in date _____

New turn in date _____

Original sentence _____

REVENUE SERVICES REFERRAL FOR PAYMENTS

Defendant's phone number _____

SSN _____

DOB _____

CDL _____

Pay base fine of \$ 450

DV Fund (PC1203.097(5)) \$ _____

St. Indemnity (PC1202.4(b)(1)) \$ _____

Women's Center \$ _____

\$ _____

Total amount due: \$ _____

☒ Fine Calculation Attached

Attorney fees \$ _____ Restitution to victim \$ _____ ☐ Booking fees \$150.00

☒ Payments granted/modified \$ _____ ☐ per month commencing _____

☐ Payment or ☐ Fine stayed until _____ ☐ Pay today

☐ Committed in lieu of fine pursuant to PC2900.5. ☐ Consecutive ☐ Concurrent

YOU ARE ORDERED to pay booking and incarceration fees subject to a financial evaluation of ability to pay and the right to a hearing on ability to pay. **YOU ARE FURTHER ORDERED** to contact Revenue Services, 11582 B Avenue, DeWitt Center, Auburn, CA within 5 days or within 5 days after you are released from custody for a financial evaluation and to establish a payment schedule for your fines, attorney fees (if applicable), booking and incarceration fees, presentence report, and any other monetary assessment ordered. If you fail to appear for your financial evaluation, Revenue Services will recommend that the Court order you to pay such costs in full.

ADDITIONAL TERMS AND CONDITIONS FOR CONDITIONAL SENTENCE ON REVERSE SIDE OF THIS FORM

Defendant's signature: Juan Leon S

Address: _____

City: _____

State: _____

Zip Code: 96142

Date: 9-17-07

Shared/Clerk/Criminal/Criminal Print Shop Forms/Sentencing Minutes DUI/DV

Revised 2/2006

P.O. BOX 896



THE FOREGOING INSTRUMENT
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OFFICE.
ATTEST:

Superior Court Clerk,
County of Placer, State
of California.
By [Signature] Deputy

COURT MINUTES

CR-2011-0002386

State of Idaho vs. Juan L Juarez

Hearing type: Court Trial

Hearing date: 3/9/2012

Time: 8:58 am

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: DC

Defense Attorney: Daniel Dolan

Prosecutor: Matthew Fredback

Interpreter: Mary Jo Palma

Counter #	
9.12	Counsel present, def. present with interpreter
	Court introduces the case.
	Interpreter's oath is on file with the Court.
9.13	State comments that a motion in front of the Court re: a prior conviction might dispose of the case if the Court would like to rule on that issue.
9.14	Mr. Dolan requests to have some brief argument.
	State is prepared to dismiss count 3.
	Court has the State's brief, and the Defense.
9.17	Mr. Dolan comments about what the defense is relying on re: substantially conforming law, and lack of right to a jury trial on a first offense DUI in Nevada.

	Court has counsel argue the Motion in Limine
	State addresses the Motion in Limine and reviews the brief that was filed. Cites case law that compares Idaho's statutes to another state re: substantially conforming. Cites case law that addresses the lack of right to a jury trial on a first offense DUI.
9.26	Mr. Dolan responds and reviews the defense's brief that was filed. Discusses the de waiting period in regards to a rising blood alcohol level, this is the difference in statute. Reviews the difference in statute regarding a defendant's right to a jury trial for a first offense DUI, cites case law.
	Court inquires if it matters whether the conviction is because of a plea or because the case was tried in front of the court.
	Mr. Dolan responds, believe it doesn't matter, continues with argument.
9.40	State responds, reviews case law comparing Idaho to Montana.
9.49	Mr. Dolan responds.
9.54	Court needs a half hour to review cases before ruling.
	State and Mr. Dolan suggest putting on the evidence now to allow the Court time to issue a decision.
	Court would rather take the half hour and rule and see where the case is.
9.55	Recess
	Back on record.
10.47	Court thanks counsel for waiting for the Court to review case law. As to the question of Nevada statute and s conviction on Nevada law substantially conforms to Idaho law, has reviewed case law.
10.59	Mr. Dolan comments about case law, and the difference in law between states re: Nevada not being a rebuttable presumption.
	Court responds that the point in the observations is that the court of appeals believes there may be some differences, but that doesn't keep it from being substantially conforming. Court determines that the statutes are substantially conforming for purposes of the convictions use for enhancement. Court addresses the issue of constitutionality, reviews case law. If a conviction is

	<p>constitutionally sound, which a conviction without a jury trial is sound.</p> <p>This Court finds that the conviction in Nevada meets the constitutional standards. Therefore is valid for used in Idaho as an enhancement.</p>
11.17	<p>Mr. Dolan is ready for the trial</p> <p>Court takes two minute break</p> <p>Recess</p>
11.24	<p>Back on record.</p>
	<p>Counsel agrees that this is the time to commence a court trial.</p>
	<p>Court will take up the court trial on the DUI.</p>
11.25	<p>State comments that the question now is the identity of the person who has the previous convictions and this charge.</p>
	<p>Mr. Dolan comments that the Def. plead to the DUI, it is a question of identity. Counsel agrees that in a previous hearing State has admitted Exh. 1 & 2 which are certified copies of previous convictions.</p>
11.27	<p>Court finds Exh's that were admitted on 1/10/12 for a Motion in Limine hearing.</p>
	<p>Mr. Dolan comments.</p>
	<p>Court clarifies that Exh. 1 & 2 are admitted for purposes of this hearing.</p>
	<p>Counsel agree.</p>
11.28	<p>State calls 1st Wit, Joshua Prichard, sworn under oath and questioned on direct. Wit. works for Blaine County Sheriff for the last 3 years, post certified, on June 18th he was patrolling south of Bellevue on hwy. 75, looking for a specific vehicle. There was a complaint of an intoxicated driver. Followed the white Chevy Blazer, vehicle failed to maintain the lane. Identifies the driver of the vehicle as the Def. seated at counsel table. Def. provided him an international driver's license and a passport with a DOB of [REDACTED]. Requested that the Def. provide a field sobriety test, after asking the Def. if he had consumed alcohol. Def. declined to do the field sobriety test.</p> <p>Mr. Dolan objects- ask clarifying question re: miranda rights and questions asked of the Def. Suggests playing the video to save time.</p>

	State has no objection. Lays foundation: the stop of the Def. was on 6/18/2011 and was recorded.
	Court has State mark video as Exh. 1- stipulated- ADMITTED only from the start time of 22:06 to the end time of 22:13.
1.44	Counsel publishes Exh. 1 to the Court.
11.50	Mr. Dolan continues questioning in aid of an objection. Object to statement made while under arrest prior to miranda rights being given. While in handcuffs Def. said first "I have a warrant".
	State responds, doesn't know if this is an interrogation
	Court review's case law re: Miranda rights, it appears that the question was prompted by the Def's statement about having a warrant. Overrules objection.
11.54	State continues questioning the Wit. Wit. transported the Def. to the hospital for a blood draw and then to Blaine Co. Public Safety Facility and participated in the pre-booking process, describes forms that are filled out by the arresting officer, Def. gave his full name Juan Leon Juarez gave date of birth nonverbally. Everything happened in Blaine County.
11.56	Mr. Dolan questions the Wit. on cross, Def. told him that he had been drinking Budweiser when he was asked "where have you been drinking".
	State objects- relevance. Mr. Dolan responds about the communication problem re: the Def's understanding of the officer's questions. Wit. assumed the Def. spoke Spanish, did not play the rights in Spanish was not able do so at the hospital. Def. did not have a California or Nevada driver's license.
12.01	State continues question the Wit. out of all the questions he felt the Def. understood.
	Court excuses the Wit.
	State calls 2 nd Wit. Heather Saunders, sworn under oath and question on direct. Works for Blaine County Sheriff and has been there for the last 12 ½ yrs. her position is Assistant Jail Administrator. Describes the booking process, and the

	<p>comparison of records. Has the jail file on Juan Juarez, which is kept under lock and key in the booking room.</p> <p>State offers Exh. 2 marked-id- booking sheet</p>
	<p>Court comments about Exh. from previous case re-marks Exh. 1- ICOP video to Exh. 6 and marks the booking sheet is Exh. 7.</p> <p>Mr. Dolan objects to Exh. 7.</p>
12.09	<p>Mr. Dolan questions the Wit. to aid in an objection, would know if there were mistakes, describes how she uses booking information to be given as statistics. Describes what things can be changed and what things cannot be changed. Agrees that certain ID numbers the Def. would not know and would not be able to provide.</p> <p>Mr. Dolan objects to this document being admitted because of the accuracy of the information.</p> <p>State responds reviews hearsay rule, the booking sheet is not created for criminal hearing. State questions the Wit. the purpose of the booking sheet is to know who is or has been in the facility and for reporting purposes for State and Federal Government.</p>
12.18	<p>Court takes judicial notice to some degree, reviews the booking sheet. ADMITS Exh. 7.</p>
12.22	<p>Mr. Dolan questions the Wit. on cross. Wouldn't know if the booking officer had the wrong DOB. There is information in the report that does not come from the arrestee. Agrees the report does not have a middle name.</p>
	<p>State has no further questions.</p>
	<p>Court excuses the Wit.</p>
12.25	<p>State rests.</p>
	<p>Mr. Dolan has no witnesses & rests.</p>
	<p>State gives closing argument, cites case law, reviews Exh. 1 & 2 convictions from Nevada and California and the personal information contained within compared to the Idaho booking information. Believes that the State has proven that the Def. is the same person.</p>

12.33	<p>Mr. Dolan presents to the Court case law. The case law says that what should be used of mug shots, finger prints or identified by court staff that was present at the previous convictions. The Def's name is not unique for the area.</p> <p>Court will not find that Juan Juarez as a unique name.</p>
12.38	<p>Mr. Dolan continues, addresses the difference in lack of a middle name in Blaine County, and proceeds reviewing the difference in personal information.</p> <p>Reviews case law.</p>
12.45	<p>State responds.</p> <p>Mr. Dolan objects to argument.</p>
	<p>Court allows State to continue.</p>
	<p>State continues.</p>
12.47	<p>Court comments about Lawyer case law re: Def. did not object to being the same person. The point in mention it this Court is not holding the Def's silence against him. In looking at the judgments and the differences in personal information between them. Finds that the Def. is one in the same and is guilty to the prior convictions.</p>
12.57	<p>Mr. Dolan argues about there being no evidence as to who filled out the information in the judgments.</p> <p>State has an issue with Mr. Dolan arguing after a decision has been given.</p> <p>Court allows Mr. Dolan to comment.</p> <p>Mr. Dolan continues.</p>
	<p>Court responds, it appears that the Def. filled out the information himself.</p> <p>Orders a PSI and a Substance Abuse Evaluation.</p>
12.59	<p>Mr. Dolan comments about services that a Def. can acquire through the state, only if the evaluation is through 19-2524.</p>
	<p>Court orders assessment under 19-2524.</p> <p>Mr. Dolan gives the Def's contact information: 851 Shanendoa Dr. Apt A202 in Hailey and phone #: 208-570-3888.</p>

	Court gives questionnaire to the Def. for a PSI. Sets Sentencing for 5/21/2012 at 10:30a.m.
1.05	Recess

RESET (Clerk, check if applicable)

Assigned to: _____

Assigned: _____

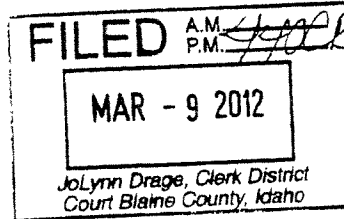
Fifth Judicial District Court, State of Idaho
In and For the County of Blaine
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

Case No: CR-2011-0002386

STATE OF IDAHO
Plaintiff,

vs.

Juan L Juarez
Shenandoah 39 Apt A 202
Hailey, ID 83333
Defendant.



CHARGE(s): (see court minutes)

REQUIRED ROA CODES: (Enter the appropriate code)

PSIO1- Order for Presentence Investigation Report (only)

PSMH1- Order for Presentence Investigation Report and
Mental Health Assessment

PSSA1- Order for Presentence Investigation Report and
Substance Abuse Assessment

On this Friday, March 09, 2012, a Pre-sentence Investigation Report was ordered by the Honorable Robert J. Elgee to be completed for Court appearance on Monday, May 21, 2012 at: 10:30 AM at the above stated courthouse.

PLEASE PROVIDE ASSESSMENTS BY THIS DATE: _____

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI

Under IC 19-2524 assessment(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to (IC 19-2524(4)):

☐ Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment (PSMH1 ROA code); and/or

☒ Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment. (PSSA1 ROA code)

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator: _____

☐ No evaluations are ordered. (PSIO1 ROA code)

DEFENSE COUNSEL: Daniel M. Dolan

PROSECUTOR: Jim Thomas

THE DEFENDANT IS IN CUSTODY: ☐ YES ☒ NO If yes where: _____

PLEA AGREEMENT: State recommendation

WHJ/JOC ☐ Probation ☐ PD Reimb ☐ Fine ☐ ACJ ☐ Restitution ☒ Other: None

Date: 3/9/2012 Signature: _____
Judge

DEFENDANT'S INFORMATION:

DO YOU NEED AN INTERPRETER? ☐ NO ☒ YES

Name: Juan L Juarez ☒ Male ☐ Female RACE: Caucasian ☒ Hispanic ☐ Other

Address _____

Telephone: 208-570-3888 Message Phone: _____ Work Phone: _____

Employer: _____ Work Address: _____

Date of Birth: _____ Social Security Number: _____

Name & Phone Number of nearest relative: _____

Date of Arrest: 6/18/2012 Arresting Agency: Blaine Sheriff

Your assigned Pre-sentence Investigator will contact you to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

ORDER FOR PRESENTENCE REPORT & EVALUATIONS 1

COURT MINUTES

CR-2011-0002386

State of Idaho vs. Juan L Juarez

Hearing type: Sentencing

Hearing date: 5/21/2012

Time: 10:54 am

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: ANDREA

Tape Number: DC

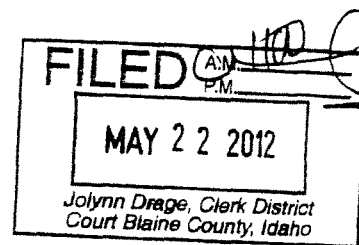
Defense Attorney: Daniel Dolan

Prosecutor: Matthew Fredback

Counter #	
10.54	<p>Court introduces case, Def. present with counsel, Mr. Dolan, State represented by Mr. Fredback</p> <p>Court received and reviewed PSI</p> <p>Counsel have also reviewed PSI, Mr. Dolan didn't have time to contact the PSI investigator after receiving report, appears there are several comments re: lack of contact w/ previous employers, advises Court that The Roosevelt Tavern responded to the PSI investigator via Email</p> <p>Court views that as a neutral issue, not the Def.'s fault the employers didn't respond to investigator, notes on PSI the Roosevelt did respond</p> <p>Counsel only have argument to present, no legal reason why judgment shouldn't be entered today</p>
10.57	<p>State begins argument-this Court heard the court trial in this case, reviews the incident, Def. was driving North from Shoshone, dispatch was called re: vehicle driving in oncoming traffic's lane, Officer Pritchard followed Def.'s vehicle and</p>

	<p>observed the same kind of driving pattern, Def. stumbled out of his vehicle and was too drunk to perform FST's, blood test BAC .238, reviews Def.'s criminal history, has a warrant from Nevada that is non-extraditable, Def. just made a payment on his SCRAM unit, has had SCRAM on since September, State is concerned with Def.'s high BAC and driving pattern on the highway at 8 p.m. when traffic could be heavy, period of jail is necessary, more than the usual 30 day recommendation, probation acceptable, intensive outpatient treatment, PSI recommended traditional rider, State believes CAPP program would be more appropriate, \$100 restitution for blood test results, \$5000/2500 fine, 3 years' probation, 3 years prison fixed, 2 years indeterminate, leaves rider program to the Court's discretion</p>
11.04	<p>Mr. Dolan speaks on behalf of Def.-presented letter to Def. from his employer, Skipp Merrick, Def. has good job and is a valued employee, surprised with PSI investigator's recommendation, reviews Def.'s employment history, Def. obtained substance abuse evaluation from the Walker Center and they recommend intensive outpatient treatment, eligible for funding through IC 19-2524, Def. has shown he doesn't need to drink and can remain sober, he is more of a social drinker, Mr. Dolan is not sure what the criteria for a rider program is anymore, doesn't believe a rider is necessary, Def. is good candidate for probation, he is entitled to 14 days credit jail previously served, he is prepared to go to work release today if ordered, Def. has taken accountability for his actions, he was late on SCRAM payment because he was laid off from Roosevelt due to slack season, made payment today w/ his first paycheck from Merritt, he has never disputed being intoxicated, court trial was for legal issues only, Def. hasn't had a chance to go back to Nevada to clear the warrant</p> <p>Mr. Dolan advises the Court he spoke to Def. previous today about needing an interpreter, Def. stated he didn't need an interpreter today, it was more confusing for his to follow the interpreter and his attorney at the last hearing</p> <p>Court questions Def., he has understood everything today and doesn't need an interpreter</p> <p>State makes correction to PSI, the BAC results were .315</p> <p>Mr. Dolan agrees the results were in the 3's, cannot recall the exact number</p> <p>Def. speaks on his own behalf, wants to stay here in the Valley, he had a hard time being here at first because he didn't know anyone at first</p> <p>Mr. Dolan notes Def.'s brother lives here now and so does his mother</p>

11.17	<p>Court questions Def. why his name is different on his paycheck</p> <p>Def.'s name is Juan Leon Juarez, his employer has his name mixed up on his paychecks, he gave his employer his SSN</p> <p>Mr. Dolan notes Def. is a U.S. citizen, his father was U.S. citizen when Def. was born which makes him a citizen automatically even though Def. was born in Mexico</p>
11.19	<p>Court enters judgment-has considered the 4 goals of sentencing, enters restitution order \$100, Def. had very high BAC and was very dangerous when driving while so intoxicated, reviews Def.'s criminal history, this case warrants more jail time than 30 days based upon the high BAC and dangerous driving pattern, orders Def. to not drink at all while on probation</p> <p>Court imposes judgment, \$2500/1500 fine, plus court costs, monthly payments \$75 start 9-21-12, 60 days jail in Blaine County jail starting today, gives 14 days credit for time served, work release authorized, driver's license suspension absolute 1 year commencing July 7, 2012, interlock required July 8, 2013-May 21, 2015, 3 years' probation with standard terms and conditions in Blaine County, Def. must meet w/ probation officer to review probation terms and sign up; 3 years prison fixed, 2 years indeterminate, prison suspended and Def. placed on probation, Court advises Def. he has 42 days from the file date stamp to appeal decision</p> <p>Mr. Dolan advises Court the Def. will be appealing trial issues to the Supreme Court, questions if Def. can be appointed a State Appellate PD</p> <p>Court requires Def. to re-apply for public defender, orders Def. off SCRAM today</p>
11.30	Recess



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

State of Idaho,)	
)	
Plaintiff,)	
vs.	)	Case No. CR-2011-2386
)	
Juan L. Juarez)	
SS# [REDACTED])	
D.O.B. [REDACTED])	
)	
Defendant.)	

JUDGMENT OF CONVICTION
UPON A PLEA OF GUILTY TO ONE FELONY COUNT,
SUSPENDING SENTENCE AND ORDER OF SUPERVISED PROBATION
I.C. § 19-2601(2)

I. INTRODUCTION

1. The date of sentencing was May 21, 2012 (hereinafter called sentencing date).
2. The State of Idaho was represented by counsel, Matthew Fredback, of the Blaine County Prosecutor's office.
3. The defendant Juan Juarez, appeared personally. I.C. § 19-2503.
4. The defendant was represented by counsel, Daniel Dolan.
5. Robert J. Elgee, District Judge, presiding.

II. ARRAIGNMENT FOR SENTENCING. I.C. § 19-2510

1. The defendant Juan Juarez was found guilty, following a court trial, to the charge below:

Crime of: Driving Under the Influence, a felony

Idaho Code: I.C. §§ 18-8004, 18-8005(6), 18-8005(10)

Guilty Verdict -- date of: March 9, 2012

2. The defendant was then asked by the Court whether the defendant had any legal cause to show why judgment should not be pronounced against the defendant, to which the defendant responded "No."

IV. SENTENCING DATE PROCEEDINGS

On May 21, 2012, the sentencing date, and after the arraignment for sentencing as set forth in section II "Arraignment for Sentencing" above, the Court proceeded as follows:

1. Determined that more than two (2) days had elapsed from the plea to the date of sentencing. I.C. § 19-2501 and I.C.R. Rule 33(a)(1).
2. Discussed the presentence report and relevant matters with the parties pursuant to I.C. § 20-220 and I.C.R. Rule 32.
3. Determined victim's rights and restitution issues pursuant to I.C. § 19-5301 and Article 1, § 22 of the Idaho Constitution.
4. Offered an aggravation and/or mitigation hearing to both parties, including the right to present evidence pursuant to I.C.R. 33(a)(1).
5. Heard comments and sentencing recommendations of both counsel and asked the defendant personally if the defendant wished to make a statement and/or to present any information in mitigation of punishment. I.C.R. Rule 33(a)(1).
6. The Court made its comments pursuant to I.C. § 19-2512, and discussed one or more of the criteria set forth in I.C. § 19-2521.

V. THE SENTENCE IMPOSED

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

The Defendant is guilty of the Crime of Driving Under the Influence, a felony, and a Judgment of Conviction shall enter.

1. **Court costs:** The defendant shall pay court costs in the sum of \$270.50.
2. **Fine:** The defendant is fined the sum of \$2,500, with \$1,500 suspended, and the defendant shall pay all costs, fees and fines ordered by this Court. This judgment that the defendant pay a fine and costs shall constitute a lien in like manner as a judgment for money in a civil action. I.C. § 19-2518, I.C. § 19-2702.
3. **Penitentiary:** The defendant, Juan Juarez, shall be committed to the custody of the Idaho State Board of Correction, Boise, Idaho for a unified sentence (I.C. § 19-2513) of 5 years; which unified sentence is comprised of a minimum (fixed) period of confinement of 3 years,

JUDGMENT OF CONVICTION AND ORDER OF SUPERVISED PROBATION - 2

followed by an indeterminate period of custody of 2 years, with the precise time of the indeterminate portion to be set by said Board according to law, with the total sentence not to exceed 5 years.

4. **Credit for time served:** The defendant is given credit for time previously served on this crime in the amount of 14 days. I.C. § 18-309.

The credit for time served is calculated as follows:
June 18, 2011 – July 1, 2012 = 14 days

5. **Sentence suspended/terms of supervised probation:** Provided however, that the execution of said **prison portion** of the sentence is hereby suspended (the costs and fine portion is not suspended) and the defendant is placed on supervised probation for a period of 3 years beginning on May 21, 2012 to and under the control of the Idaho State Board of Correction, (I.C. § 19-2601(5) and I.C. § 20-219), subject to the following terms:

General Terms and Conditions of Probation:

- a) **Supervision Level:** The defendant shall successfully complete any specialized supervision level deemed appropriate for the Defendant's needs by the Department of Probation and Parole.
- b) **General Conditions:** Abide by the Court Ordered Specific Conditions of Probation previously signed and attached hereto as Exhibit 1, which exhibit is by this reference incorporated herein.
- c) **Specific Conditions:** Abide by the Court Ordered Specific Conditions of Probation previously signed and attached hereto as Exhibit 2, which exhibit is by this reference incorporated herein.

Special Terms and Conditions of Probation:

- a) **Payment of court costs, fines and restitution:** The defendant shall begin making payments towards the court costs, fines and restitution ordered herein on September 21, 2012 in the amount of at least \$75.00 per month.
- b) **County jail time to be presently served:** The defendant shall serve 60 day(s) in the county jail as a term and condition of probation, which shall commence immediately. The credit for time served previously awarded to the defendant, in the amount of 14 days, shall count against this jail time. The defendant is granted work release if the defendant otherwise qualifies under the Sheriff's classification system.
- c) **Driving License Suspension:** The defendant's driver's license shall be suspended absolutely for a period of one year beginning July 7, 2012.
- d) **Interlock Device:** Following the period of license suspension, the defendant, while operating a motor vehicle, shall drive only a motor vehicle equipped with a functioning ignition interlock device. The defendant must use such an interlock device from July 8, 2013 until May 21, 2015.

VI. ORDER REGARDING RESTITUTION

1. **Restitution to Victim:** The Court hereby ORDERS a Judgment of Restitution to be entered in this case in the sum of \$100.00, (I.C. § 19-5304 (victim)). A separate written order of restitution shall be entered. I.C. § 19-5304(2). This amount is payable through the Clerk of the District Court to be disbursed to the victim(s) in this matter as follows:

Name:	Forensic Services	\$100.00
	Lab No. P20110980	
	700 South Stratford Drive, Ste 125	
	Meridian, Idaho 83642-6202	

VII. RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS

The Right:

The Court advises the defendant, of the Defendant's right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.A.R. Rule 14 (a).

In forma Pauperis:

The Court further advises the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3). I.C. § 19-852(a)(1) and (b)(2).

VIII. ENTRY OF JUDGMENT - RECORD BY CLERK

The Court orders the Judgment and record be entered upon the minutes and that the record be assembled, prepared and filed by the Clerk of the Court in accordance with I.C. § 19-2519.

IX. BOND/BAIL

The conditions of bail given in this case having been satisfied, the bail is ordered exonerated. I.C.R. 46(g).

X. ORDER ON PRESENTENCE INVESTIGATION REPORTS


The parties are hereby ordered to return their respective copies of the presentence investigative reports to the deputy clerk of the court. Use of said report shall thereafter be governed by I.C.R. 32(h)(1),(2), and(3).

XI. ORDER OF COMMITMENT TO COUNTY SHERIFF

It is ADJUDGED and ORDERED that the defendant be committed to the custody of the Sheriff of Blaine County, Idaho, for service of the County Jail time ordered herein as a term and condition of probation.

IT IS SO ORDERED.

DATED: May 21, 2012

SIGNED: 
Robert J. Elgee, District Judge

I.C.R. RULE 49 (b)
NOTICE OF ORDER

I, Deputy Clerk for the County of Blaine, do hereby certify that on the 22 day of May, 2012, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

Jim Thomas, Esq.
Blaine County Prosecuting Attorney
PO Box 756
Hailey, ID 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Fax

Daniel Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, ID 83340

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Fax

Kevin Wayt
Probation Officer
dist5@idoc.idaho.gov

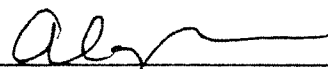
☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☒ Email

Blaine County Sheriff's Office
Hailey, Id 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Fax

CCD Sentencing Team
ccdsentencingd5@idoc.idaho.gov

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Email



Deputy Clerk

EXHIBIT 1

COURT ORDERED

GENERAL CONDITIONS OF PROBATION

IMPOSED AT THE REQUEST OF IDAHO DEPT. OF CORRECTION

I.C. §§ 20-219, 19-2601(5), and I.C.R. 33(d).

1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Dept of Correction. JK
2. **Laws and Conduct:** The defendant shall obey all municipal, county, state and federal laws. The defendant shall comply with all lawful requests of any agent of the Idaho Dept of Correction. The defendant shall be completely truthful at all times with any agent of the Idaho Dept of Correction. During any contact with law enforcement personnel the defendant shall provide their identity, notify the officer(s) that they are under supervision and provide the name of their supervising officer. The defendant shall notify their supervising officer of the contact within 24 hours. JK
3. **Residence:** The defendant shall not change residence without first obtaining permission from an authorized agent of the Idaho Dept of Correction. JK
4. **Reporting:** The defendant shall report to his/her supervising officer as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the Idaho Dept of Correction. JK
5. **Travel:** The defendant shall not leave the State of Idaho or the assigned district without first obtaining permission from his/her supervising officer. JK
6. **Extradition:** If the defendant does leave the State of Idaho, with or without permission, the defendant does hereby waive extradition to the State of Idaho and will not contest any effort to return the defendant to the State of Idaho. JK
7. **Employment/Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his/her supervising officer. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the offender's specific situation and as approved by his/her supervising officer. JK
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form. The defendant shall not, for any reason enter any establishment which sells or dispenses alcoholic beverages by the drink. This provision is not intended to preclude the defendant from entering restaurants, cafes, or other establishments whose primary business is the sale of food and non-alcoholic beverages. It is intended to preclude the defendant from entering bars and taverns. In any event, defendant may not enter such establishments for any purpose other than food consumption or employment reasons, and must leave as soon as food is consumed or employment shift terminates. JK
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug or any substance that simulates the effect of an illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him/her by a licensed physician or dentist. The defendant shall use medications only in the manner prescribed by their physician or dentist. JK

10. **Firearms/Weapons:** The defendant shall not purchase, carry, possess or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to: knives with blades over two and one half inches in length, switch-blade knives, brass knuckles, swords, throwing stars and other martial arts weapons. The defendant shall not reside in any location that contains firearms or weapons. JK
11. **Search:** The defendant shall consent to the search of his/her person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority conducted by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant waives his/her Fourth Amendment Rights concerning searches. Furthermore, anyone with whom the defendant lives must also execute such a waiver. JK
12. **Cost of Supervision:** The defendant shall comply with Idaho Code 20-225, which authorizes the Idaho Dept of Correction to collect a cost of supervision fee. The defendant shall make payments as prescribed in his/her monthly cost of supervision bill. JK
13. **Associations:** The defendant shall not associate with any person(s) designated by any agent of the Idaho Dept of Correction. JK
14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant may be required to obtain tests at their own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. JK
15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the Court or any agent of the Idaho Dept of Correction. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the Court or any agent of the Idaho Dept of Correction. The defendant may be required to attend treatment, counseling or other programs at their own expense. JK
16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the probation officer. The defendant shall allow the probation officer to enter their residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alert them to the approach of his/her probation officer. The defendant shall not keep any vicious or dangerous dog or other animal on or in their property that the probation officer perceives as an impediment to accessing the defendant or their property. JK
17. **Absconding Supervision:** The defendant will not leave the state or the assigned district in an effort to abscond or flee supervision. The defendant shall make himself/herself available for supervision and program participation as instructed by the probation officer and will not actively avoid supervision. JK
18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner and to the parties ordered by the Court. The defendant shall make payments as ordered by the Court or as designated in a Payment Agreement and Promissory Note to be completed with an agent of the Idaho Dept of Correction. JK
19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement, except as allowed in Idaho Dept. of Correction policy and with the written consent of both the Court and the Idaho Dept. of Correction. JK
20. **Intrastate/Interstate Violations:** If allowed to transfer supervision to another district or state the defendant agrees to accept any violation allegation documents purportedly submitted by the agency/officer supervising the

defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents. JC

21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific field office that provides his/her supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific field office. All additional rules will be explained to the defendant and provided to him/her, in writing, by an agent of the Idaho Dept of Correction. JC

EXHIBIT 2

COURT ORDERED

SPECIFIC CONDITIONS OF PROBATION

IMPOSED IN ADDITION TO THE EXHIBIT 1 GENERAL CONDITIONS

I.C. § 20-221

1. **Discretionary county jail time to be served in the future:** The defendant shall serve not more than 30 days in the county jail at the discretion of the defendant's probation officer, with the prior approval of the Court. Any time spent in jail pursuant to an Agent's Warrant and/or for absconding supervision does not count against this discretionary jail time. JK
2. **Polygraph examinations:** The defendant shall submit to polygraph examinations at the defendant's own expense when requested to do so by the defendant's probation officer. JK
3. **Stipulate to the admission of test results:** The defendant shall stipulate to the admission of blood, urine, or breath test results in the form of a certified affidavit at any probation hearing following a judicial determination that live testimonial evidence would otherwise be impractical. However, the defendant, at the defendant's own expense may have the lab analysis of the defendant's blood, urine, or breath performed at an in-state approved lab of the defendant's choosing upon notifying the official administering the test at the time the test is requested. JK
4. **Modification of probation requirements:** Probation conditions are set by the court. The court delegates some discretion to the agents of the Department of Corrections, Probation and Parole to make or enforce probation requirements. In the event Probation and Parole sets a condition of probation or requires the defendant to comply with a condition of probation that is unreasonable or impossible to perform, Defendant has the right to motion the court to modify or revoke specific probationary requirements. Unless or until any condition is modified by the court, Defendants are expected comply to their utmost ability with such conditions as may be set. It is very unlikely that the standard written conditions of probation set by the court will be modified. JK

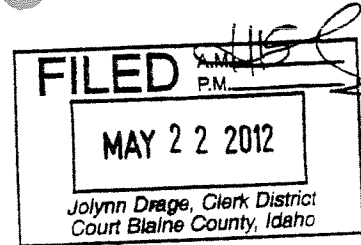
I Juan Suarez, have read, or have had read to me, the above agreement. I understand and accept the conditions of supervision under which I have been released. I agree to abide by and conform to them and understand that my failure to do so may result in the revocation of my probation and parole.

Juan Suarez
Defendant

[Signature]
Witness

7/5/12
Date Accepted.

ORIGINAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUTNY OF BLAINE

STATE OF IDAHO,
Plaintiff,
vs.
JUAN L. JUAREZ,
Defendant.

Case No. CR-2011-2386
ORDER ON RESTITUTION

THIS MATTER came before the Court for sentencing hearing in the above-captioned action. The Court finds that Idaho State Police Forensic Services is a victim under Idaho Code § 19-5304 and has suffered compensable "economic loss" in the amount of one hundred dollars (\$100.00) as a result of the defendant's criminal conduct.

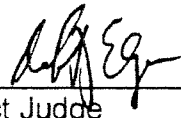
The Court HEREBY ORDERS that the Defendant pay to the victim the aforesaid amount of economic loss as restitution in the above-captioned action to be paid on a schedule to be determined by the Defendant's probation officer and to be paid in full at least sixty (60) days prior to the Defendant's release from probation. The Defendant shall make payments to the Blaine County Clerk of the Court, 201 Second Ave. South, Suite 110, Hailey, Idaho 83333.

The Clerk of the Court shall thereafter remit restitution payments made by the Defendant to:

Forensic Services	\$100.00
Lab No. P20110980	
700 South Stratford Drive, Ste 125	
Meridian, Idaho 83642-6202	

It is further ordered that this order shall be a civil judgment against the above-named defendant and in favor of the aforesaid victim.

SO ORDERED this 26 day of May, 2012.



District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22 day of May, 2012, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Jim J. Thomas
Blaine County Prosecuting Attorney
201 2nd Ave. South, Ste. 100
Hailey, ID 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Telecopy

Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, ID 83340

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Telecopy

Kevin Wayt
Blaine County Felony Probation
Hailey, ID 83333

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Telecopy

Forensic Services
700 South Stratford Drive, Ste 125
Meridian, ID 93642-6202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Telecopy



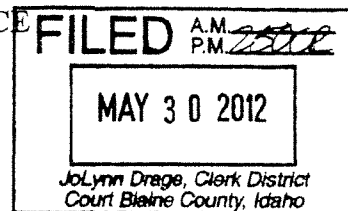
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,)
Plaintiff,)
vs.)
Juan Leon Juarez)
[REDACTED])
Hailey Jo 83333)
DOB: [REDACTED])
DL No. [REDACTED] CA)
Defendant.)

Case No. CR2011-2386

ADDENDUM TO PROBATION
CONDITION RE: IGNITION
INTERLOCK DEVICE



IT IS HEREBY ORDERED that the above-named defendant shall abide by all of the special conditions of the Guardian Interlock Responsible Driver Program, as follows:

1. The Defendant will have in interlock system installed in any vehicle they operate by July 8, 2013 and will contact an agent to arrange for installation.

2. The Defendant will only operate a vehicle with a functioning interlock system installed, and will operate no other vehicle during the term of this order unless specifically excused by the court by written order.

3. The Defendant will not adjust, tamper with, alter, or circumvent the interlock system installed or the electrical wiring to the unit, of the unit, or to the ignition system, nor remove the unit from the designated vehicle without prior written approval of this court.

4. The Defendant will have monitoring checks performed by the installer approximately every sixty (60) days and is subject to random monitor checks.

5. The Defendant agrees to abide by the policies and procedures of the Idaho Ignition Interlock program.

6. The program shall begin immediately upon installation of the interlock device and will terminate May 21, 2015.

IT IS FURTHER ORDERED that the cost of this program is to be paid for:

X

Entirely by the defendant.

Entirely by the County Fund established for this purpose. The county fund is to be reimbursed by the defendant by _____

Shared equally by the defendant and the county fund. The Defendant shall pay his one-half of the service directly to the installer on a monthly basis. The county fund is to be reimbursed by the defendant by _____.

I DO HEREBY ACKNOWLEDGE THAT I HAVE READ ALL OF THE ABOVE TERMS AND AGREE TO ABIDE BY THEM.

(Defendant's Signature)

IT IS ORDERED this 23 day of May, 2012.

Robert J. Elgee
(Judge's Signature)

Robert J. Elgee, District Judge
R. Ted Israel, Magistrate

TO MAKE AN APPOINTMENT FOR INSTALLATION OF THE INTERLOCK DEVICE, PLEASE VISIT THE FOLLOWING WEBSITE FOR A LIST OF PROVIDERS:

<http://www.itd.idaho.gov/ohs/InstallationSites.htm>

Copies delivered to:

<u>✓</u>	Defendant/Defendant's Attorney
<u>✓</u>	Prosecutor
<u>✓</u>	Department of Transportation
<u>✓</u>	Probation Department

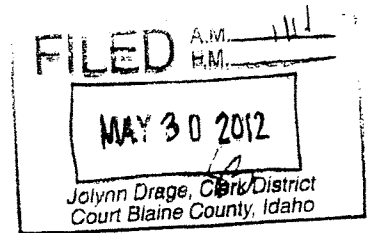
Dated this 24 day of May, 2012.

Deputy Clerk
Deputy Clerk

Misdemeanor _____ Felony X
Blaine County misdemeanor probation office: (208) 788-5528
Felony Probation & Parole office: (208) 736-3080
Probation supervised X unsupervised _____

ORIGINAL

Jim J. Thomas, ISBN 4415
Blaine County Prosecuting Attorney
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333
Telephone: (208) 788-5545
Fax: (208) 788-5554



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-2011-2386

STATE'S MOTION TO DISMISS
COUNT THREE

Plaintiff State of Idaho moves the Court pursuant to Idaho Code § 19-3504 and Idaho Criminal Rule 48(c) for its order dismissing Count Three of the above-captioned criminal action.

The reasons for the dismissal are: (a) pursuant to a plea agreement between the parties; and (b) dismissal would serve the ends of justice and the effective administration of the Court's business.

DATED this 24 day of May, 2012.

A handwritten signature in dark ink, appearing to read "Matt Fredback".

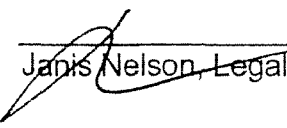
Matthew Fredback, ISBN 7262
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2012, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

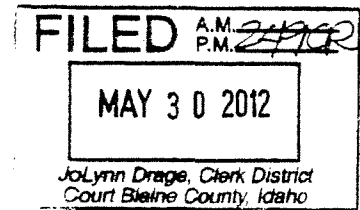
Dan Dolan, Esq.
Attorney at Law
P.O. Box 757
Ketchum, Idaho 83340

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Janis Nelson, Legal Secretary

ORIGINAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,

Plaintiff,

vs.

JUAN L. JUAREZ,

Defendant.

Case No. CR-2011-2386

ORDER GRANTING MOTION
TO DISMISS COUNT THREE

The Court, having considered the motion to dismiss, and good cause appearing therefor, HEREBY ORDERS that Count Three of the above-captioned criminal action be dismissed.

DATED this 20 day of May, 2012.

Robert Elgee
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of May, 2012, I caused to be served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting
Attorney's Office
201 2nd Avenue S., Suite 100
Hailey, Idaho 83333

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy

~~, Esq.
Attorney at Law
P.O. Box
, Idaho 833~~

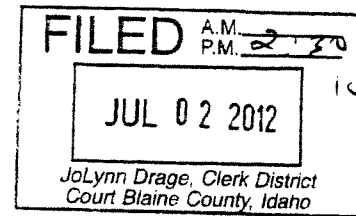
DANDOLAN

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

C. Reaby

Deputy Clerk

DANIEL M. DOLAN
Attorney At Law
671 First Avenue North
Post Office Box 757
Ketchum, ID 83340
Telephone: 208-726-3005
Facsimile: 208-726-1187
Idaho State Bar Number 4147
Attorney for Defendant



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Case No. CR 2011 2386
vs.)	
	)	NOTICE OF APPEAL
Juan L. Juarez,,)	
)	
Defendant-Appellant.)	
_____)	

TO: The above named Respondent, STATE OF IDAHO

 and their Attorneys, Jim J. Thomas, Blaine County Prosecuting Attorney,
 201 2nd Avenue S. Suite 100 and Lawrence G. Wasden, State of Idaho
 office of the Attorney General, 700 W. Jefferson Street, Suite 210, P.O.
 Box 83720, Boise, Idaho 83720-0010
 and the Clerk of the above Entitled Court.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant Juan L. Juarez appeals against the above named respondent to the Idaho Supreme Court from The Judgement of Conviction entered in the above entitled action on May 22, 2012, The Honorable Judge Robert J. Elgee presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, from the Judgement of Conviction described in paragraph 1. is an appealable order under and pursuant to Idaho Appellate Rule (I.A.R). 11 (c.)(1), and (I.A.R). 11 (c.)(6).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is:

(a) Did the district court err in finding that the Nevada DUI law was a substantially conforming criminal violation, as the basis of a prior conviction to enhance the DUI charge to a felony were Nevada is not concerned with the alcohol level at the time of driving, but looks to the alcohol level at the time of the test.

(b) Did the district court err in finding that the Nevada DUI law was a substantially conforming criminal violation, as the basis of a prior conviction to enhance the DUI charge to a felony were Nevada does not allow for a jury trial for a first offense DUI charge

(c) Did the district court err in finding that the state presented sufficient evidence to establish defendant's identity as the perpetrator who had previously been convicted of a DUI in Nevada beyond a reasonable doubt.

(d) Did the district court err in finding that the state presented sufficient evidence to establish defendant's identity as the perpetrator who had previously been convicted of a DUI in California beyond a reasonable doubt.

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) Entry of Guilty Plea Hearing to the DUI portion of the charge held on December 19, 2011 (Court Reporter: Susan Israel, estimation of pages listed on the Register of Actions less than 100 pages);
- (b) States Motion in Limine Hearing held on January 10, 2012 (Court Reporter: Susan Israel, estimation of pages listed on the Register of Actions less than 100 pages);
- (c) Court Trial held March 9, 2012, (Court Reporter: Susan Israel, estimation of pages listed on the Register of Actions one half day of trial more than 100 pages);

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):


- (a) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing or the Rule 35 motion hearing.

7. I certify:

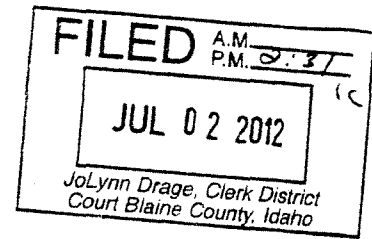
- (a) That a copy of this Notice of Appeal has been served on the Court Reporter, Susan Israel, 201 2nd Avenue S., P.O. Box 1379, Hailey Idaho 83333;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (I.C. §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

- (d) That arrangements have been made with Blaine County who will be responsible for paying for the reporter's transcript, as the client is indigent, Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e);
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED THIS 20 day of July, 2012


Daniel M. Dolan
Attorney for Appellant.

DANIEL M. DOLAN
 Attorney At Law
 671 First Avenue North
 Post Office Box 757
 Ketchum, ID 83340
 Telephone: 208-726-3005
 Facsimile: 208-726-1187
 Idaho State Bar Number 4147
 Attorney for Defendant



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Case No. CR 2011 2386
vs.	)	Ex Parte Motion To:
	)	Appoint Counsel on Appeal;
Juan L. Juarez,	)	Waive Fees and Costs of Appeal:
	)	Prepare the Transcript and Clerk's
Defendant-Appellant.	)	Record at Public Expense

COMES NOW Juan L. Juarez, the Appellant herein, by and through his court appointed attorney of record, Daniel M. Dolan, and pursuant to Rules 24(e) and 27(e) and 45.1 of the I.A.R. hereby request that:

A. This Court pursuant to Idaho Code § 19-867, for its order appointing the State Appellate Public Defender's Office to represent the appellant in all further appellate proceedings and allowing current counsel for the defendant to withdraw as counsel of record. This motion is brought on the grounds and for the reasons that the appellant is currently represented by Blaine County Public Defender, Daniel M. Dolan; the State Appellate Public Defender is authorized by Idaho Code § 19-870 to represent the defendant in all felony appellate proceedings; the defendant has been found indigent; and it is in the interest of justice for them to do so in this case.

The appointment of the State Appellate Public Defender is for the purposes of the appeal only.

B. The cost to prepare the transcript and clerks record be prepared at public expense.


C. That any and all fees and cost of this appeal be waived.

This motion is based upon the following grounds.

1. The appellant is an indigent person without funds to retain private counsel.
2. The Appellant was represented by court appointed counsel in the trial court.
3. The appellant is an indigent person without funds to pay for the costs of the preparation of the transcript and clerk's record herein.
4. The appellant brings this action in good faith
5. Appellant has attached his affidavit of indigence in support of this motion.

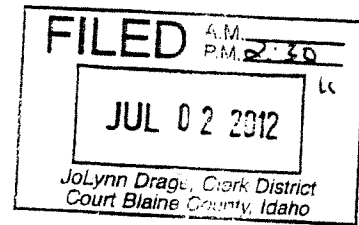
WHEREFORE, appellant respectfully request this court to appoint an attorney to represent him on appeal, and to waive the cost and fees of this appeal and to have the clerk's record and transcript prepared at public expense,

DATED THIS 2nd day of July, 2012



Daniel M. Dolan
Attorney for Appellant.

DANIEL M. DOLAN
Attorney At Law
671 First Avenue North
Post Office Box 757
Ketchum, ID 83340
Telephone: 208-726-3005
Facsimile: 208-726-1187
Idaho State Bar Number 4147
Attorney for Defendant



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

STATE OF IDAHO,)

Plaintiff-Respondent,)

vs.)

Juan L. Juarez,)

Defendant-Appellant.)

Case No. CR 2011 2386

**MOTION TO PROCEED
IN FORMA PAUPERIS
AND SUPPORTING
AFFIDAVIT**

COMES NOW, the Defendant-Appellant, Juan L. Juarez, by and through his attorney of record, in the above-entitled matter and moves this Honorable Court for an order of the Court to proceed in forma pauperis on the grounds he indigent pursuant to Idaho Code §31-3220A.

Said Motion is supported by the following Affidavit of Inability to Pay Court Fees.

DATED this 2nd day of July, 2012.

Daniel M. Dolan
Attorney for Defendant-Appellant

Motion to Proceed in forma pauperis
AFFIDAVIT OF INDIGENCE

AFFIDAVIT OF INABILITY TO PAY

STATE OF IDAHO)
) ss
County of Blaine,)

Juan L. Juarez, declares under penalty of perjury, that I am the Petitioner in the above entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief.

The nature of my action is: an appeal from the Judgement of Conviction.

In further support of this application, I answer the following questions:

1. I am presently employed. ☒ Yes ☐ No

- a. If the answer is "Yes" my wages per month are approximately \$2000.00 ^{1550⁰⁰ BEFORE TAXES}
- b. If the answer is "No" list last date of employment and salary:

_____ \$ _____

2. I have received money from the following sources within the last 12 months:

- | | |
|---|--------------|
| <input type="checkbox"/> business, profession or other self employment | \$ <u>NO</u> |
| <input type="checkbox"/> rent payments, interest or dividends | \$ <u>NO</u> |
| <input type="checkbox"/> pensions, annuities or life insurance payments | \$ <u>NO</u> |
| <input type="checkbox"/> gifts or inheritances | \$ <u>NO</u> |
| <input type="checkbox"/> other sources | \$ <u>NO</u> |

AFFIDAVIT OF INDIGENCE

3. The real and personal property I own is: no real property, miscellaneous personal property such as clothing, Long T-shirt, Long, Short

4. I have a savings account: ☐ Yes ☒ No \$ _____

5. I have a checking account: ☐ Yes ☒ No \$ _____

6. Balance in inmate trust account approximately \$2

7. Spouse's income \$ none

8. Affiant's dependents: None

9. Affiant's debts: \$800 TO Friend who loaned \$ for work release, Court Fines Approx \$700 NV, \$450 CA, 1770⁰⁰ etc

10. Affiant's monthly expenses: rent \$480.00, utilities & 175.00, Probation Fees \$60, \$400⁰⁰ Food

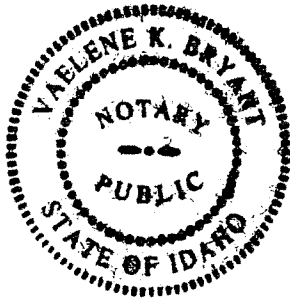
AFFIDAVIT OF INDIGENCE

Further, your Affiant states that I am unable to pay the costs of pursuing this action. I
verify that the statements made in this affidavit are true and correct.

DATED this 22 day of July, 2012.

Juan León J.
Juan L. Juarez, Affiant

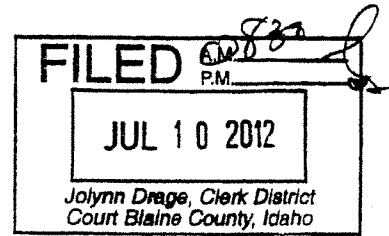
SUBSCRIBED AND SWORN to before me this 22nd day of July, 2012.



Vaele K. Bryant
Notary Public for Idaho
Commission Expires: May 29, 2015
Resides: Nashville

AFFIDAVIT OF INDIGENCE

DANIEL M. DOLAN
Attorney At Law
671 First Avenue North
Post Office Box 757
Ketchum, ID 83340
Telephone: 208-726-3005
Facsimile: 208-726-1187
Idaho State Bar Number 4147
Attorney for Defendant



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Case No. CR 2011 2386
vs.	)	ORDER:
	)	APPOINTING ATTORNEY;
Juan L. Juarez,	)	WAIVING ALL FEES;
	)	FOR PREPARATION OF TRANSCRIPT
	)	AND CLERK'S RECORD
Defendant-Appellant.	)	AT PUBLIC EXPENSE
)	

THIS MATTER having come before this court upon the motion of the appellant,
Juan L. Juarez, and being supported by appellant's affidavit;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

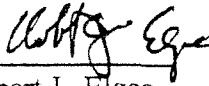
1. For the purpose of this appeal, Juan L. Juarez, Appellant is found to be indigent.
2. **IT IS HEREBY ORDERED** that Daniel M. Dolan, is withdrawn as counsel of record for the Defendant and the State Appellate Public Defender is hereby appointed to represent the Appellant, Juan L. Juarez, in the above entitled matters for appellate purposes.

The appointment of the State Appellate Public Defender is for purposes of the appeal only.

3. All fees and cost of this appeal shall be waived.

4. The preparation of the transcript of proceedings and clerk's record is order to be prepared at county expense.

DATED THIS 9 day of July, 2012


Robert J. Elgee,
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 10 Day of July, 2012, I served a true and correct copy of the within and foregoing document by the method indicated below, and addressed to each of the following:

Blaine County Prosecuting Attorney
201 2nd Ave South Ste. 100
Hailey, Idaho 83333
208 788-5554

☒ U.S. Mail Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Telecopy

Daniel M. Dolan
P.O. Box 757
Ketchum, Idaho 83340
208 726-1187

☒ U.S. Mail Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Telecopy

Susan Israel Blaine County Court Reporter
201 2nd Ave South Ste. ____
Hailey, Idaho 83333

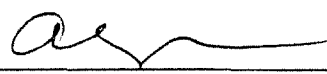
☐ U.S. Mail Postage Prepaid
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☐ Telecopy

State of Idaho Office of the Attorney General
P.O. Box 83720-0010
Boise, Idaho 83720-0010

☒ U.S. Mail Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Telecopy

State Appellate Public Defender
3050 N Lake Harbor Lane, Suite 100
Boise, Idaho 83703
208-334-2985

☒ U.S. Mail Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Telecopy



Deputy Clerk

EXHIBIT LIST

Confidential Exhibit:

Presentence Report dated May 16, 2012.

Exhibits from Preliminary Hearing held September 14, 2011.

State's Exh 1. Toxicology Report dated July 20, 2011.

State's Exh 2. Certified Copies of DUI Conviction from State of Nevada.

State's Exh 3. Certified Copies of Excessive DUI Conviction from State of California.

Exhibit from Court Trial held January 10, 2012 and March 9, 2012.

State's Exh 1. Certified Copies of DUI Conviction from State of Nevada.

State's Exh 2. Certified Copies of Excessive DUI Conviction from State of California.

State's Exh 3. Nevada law.

State's Exh 4. Nevada law.

State's Exh 5. California law.

State's Exh 6. ICOP video of stop.

State's Exh 7. Blaine County Sheriff's Office Booking Report dated June 19, 2011.

Dated this 11 day of September, 2012.



Andrea Logan, Deputy Clerk

STATE OF IDAHO,)	Supreme Court No. 40135
)	
Plaintiff/Respondent,)	CLERK'S CERTIFICATE
)	
vs.)	
)	
JUAN L. JUAREZ,)	
)	
Defendant/Appellant.)	
)	

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

STATE OF IDAHO,	)	Supreme Court No. 40135
)	
Plaintiff/Respondent,	)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
JUAN L. JUAREZ,)	
)	
Defendant/Appellant.)	
_____)	

I, Andrea Logan, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and Court Reporter's Transcript to each of the Attorneys of Record in this cause as follows:

Idaho State Appellate Public
Defender's Office
3647 Lake Harbor Lane
Boise, Idaho 83703

Attorney General's Office
CRIMINAL APPEALS
P.O. Box 83720
Boise, Idaho 83720-0010

Attorney for Defendant/Appellant

Attorney for Plaintiff/Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of the said Court this 11 day of September, 2012.

JOLYNN DRAGE, Clerk of the Court

By 
Andrea Logan, Deputy Clerk